

Annex D

Report of the Sub-committee on Aboriginal Subsistence Whaling

Wednesday 14 July 2004, Sorrento, Italy

1. INTRODUCTORY ITEMS

The meeting took place at the Hilton Sorrento Palace Hotel, Sorrento, Italy on 14 July 2004. A list of participants is given in Appendix 1. The terms of reference of the Aboriginal Subsistence Whaling Sub-committee are to consider relevant information and documentation from the Scientific Committee, and to consider nutritional, subsistence and cultural needs relating to aboriginal subsistence whaling and the use of whales taken for such purposes, and to provide advice on the dependence of aboriginal communities on specific whale stocks to the Commission for its consideration and determination of appropriate management measures (*Rep. int. Whal. Commn.* 48: 31).

1.1 Election of Chair

Andrea Nouak (Austria) was elected Chair.

1.2 Appointment of Rapporteur

Alexander Gillespie (New Zealand) was appointed as rapporteur.

1.3 Review of documents

The documents for discussion included:

IWC/56/AS1 Revised Draft Agenda.

IWC/56/AS2 Documentation to IWC on Greenland Whaling, 1979-2003.

IWC/56/4 Report of the Small Working Group Reviewing Schedule paragraph 13 Regarding ASW provisions: Proposals to Amend the Schedule.

IWC/56/Rep 1 Report of the Scientific Committee, Items 8 and 9.

IWC/54/5, Appendix 4. The Aboriginal Whaling Management Procedure - Possible Text. (*Ann. Rep. Int. Whaling Comm.* 2002: 74-75).

2. ADOPTION OF THE AGENDA

The adopted agenda is given as Appendix 2.

3. ABORIGINAL SUBSISTENCE WHALING SCHEME

3.1 Aboriginal Whaling Management Procedure (AWMP)

3.1.1 Report of the Scientific Committee

3.1.1.1 GRAY WHALES (IWC/56/REP 1, ITEM 8.2)

The Chair of the Scientific Committee's Standing Working Group on the Development of an Aboriginal Whaling Management Procedure, Greg Donovan (hereafter Chair of the SWG), reported on the Scientific Committee's work in this regard. Last year, he had informed the Sub-committee that the Scientific Committee expected to be able to recommend a *Strike Limit Algorithm (SLA)* for eastern North Pacific gray whales to the Commission at the present

meeting. This will be the second *SLA* that the Scientific Committee has recommended in the development process. Because the Committee were making a major recommendation, the Chair of the SWG gave a thorough presentation of the work of the Committee on this issue over the whole development process. The full presentation is available upon request to interested delegations as an electronic file or as a printout of the slides used. He also noted that as in previous years, he is happy to discuss any issues raised with interested parties. What follows is a very short summary of the key points made in the presentation. Full details of the Scientific Committee's work can be found in IWC/56/Rep 1, Item 8 and Annex E.

The Scientific Committee began addressing aboriginal subsistence management procedures in the early 1990s after completion of the RMP. In 1994, the Commission formally instructed the Scientific Committee to work on the development of an aboriginal whaling management procedure (Resolution 1994-4). The Commission had reiterated the objectives of such a scheme as to:

- (1) ensure risks of extinction are not seriously increased (highest priority);
- (2) enable harvests in perpetuity appropriate to cultural and nutritional requirements; and
- (3) maintain stocks at highest net recruitment level and if below that ensure they move towards it.

The advantages (to both the management body and the users) of a management procedure over '*ad hoc*' management were stressed, as was the value of computer simulations to try out potential candidate procedures. The simulation trial structure is designed to test procedures against the inevitable uncertainty in scientific knowledge about the whales and their environment.

The Commission agreed in 1998 that the eventual aboriginal whaling scheme (which includes both the scientific and non-scientific aspects of management) would include both generic and case-specific elements. In particular, it was agreed that *Strike Limit Algorithms* (the way in which the need requests forwarded by the Commission to the Scientific Committee are evaluated to determine whether they are acceptable from the point of view of the risk-related objectives given above - it is assumed for the purposes of trials that all strikes result in death) could be case-specific and introduced to the AWS as they became available. The Scientific Committee had agreed that it would proceed with the data-rich fisheries first, i.e. the bowhead and gray whale hunts. In 2002 it proposed the *Bowhead SLA*. Throughout the process, the Scientific Committee placed great emphasis on feedback from the Commission and hunters via the Commission's Aboriginal Whaling sub-committee, and each year the Chair of the SWG has made a detailed presentation of the development process, requested advice on various matters and been available for consultation with interested delegations and individuals.

The candidate procedures for the gray whale case were tested for a broad range of uncertainty in a variety of factors, including: changes in *MSYR* and *MSYL*; model uncertainty; time dependent changes in carrying capacity, natural mortality and productivity; episodic events; stochasticity; survey bias and variability; survey frequency and errors in the historic catch series. The overall performance of candidate *SLAs* was judged by a combination of an examination of the detailed conservation and need satisfaction statistics for each of the Evaluation Trials and Robustness Trials and human integration of these results in the context of the relative plausibility each member assigns to the individual trials.

Two procedures performed equally well in the trials, one was the J-B2 and the other was the GUP2¹ based on J-B2 and D-M2 procedures. The Scientific Committee therefore had examined other features that may be used to separate the two *SLAs*. Recalling the discussions about the value or otherwise of the ‘unified’ (averaging) approach when recommending the *Bowhead SLA*, the Committee noted that the GUP approach includes a built-in check and balance system in that if one of the component *SLAs* behaves poorly for a particular scenario, this effect may be balanced by the other *SLA* and vice versa. Averaging has also been recommended by MCDM² experts as an appropriate method. It again followed this philosophical approach and agreed that the GUP2 *SLA* fully met the Commission’s management objectives. It also noted that it might be possible to ‘polish’ the GUP2 *SLA* and its two constituent *SLAs* further. However, the Committee agreed that it should not expend resources unnecessarily in further attempting to achieve some hypothetical level of ‘perfection’. It strongly believed that these resources should be dedicated to addressing the serious issue of the Greenland fisheries for fin and minke whales, for which the Committee has never been able to provide management advice.

In conclusion, the Scientific Committee unanimously recommended that the GUP2 *SLA* (hereafter the ‘*Gray whale SLA*’) be forwarded to the Commission. It believes that this *SLA* meets the objectives of the Commission set out in 1994 (IWC, 1995) and represents the best scientific advice that the Committee can offer the Commission with respect to the management of the Eastern North Pacific stock of gray whales.

In making this recommendation, the Scientific Committee noted the integral importance of Implementation Reviews to the whole process. Regular Implementation Reviews would occur every five years and normally involve at least reviews of information:

- (1) required for the *SLA* (i.e. catch data, abundance estimates); and
- (2) to ascertain if the present situation is as expected and within tested parameter space.

In addition, to enable swift reaction to new information that gives rise to serious concern, Unscheduled Implementation Reviews can be called. He provided a number of examples as to possible ‘triggers’ for such early reviews. There are a variety of possible outcomes of Implementation Reviews, including:

- (a) the continuation of use of the *SLA*;
- (b) the setting of a zero strike limit;

- (c) the running of further simulation trials;
- (d) the undertaking of a new census immediately; or
- (e) a combination of some of the above.

The Chair of the SWG thanked Eva Dereksdóttir, Kjartan Magnússon, Sue Holloway (neé Johnston) and Doug Butterworth (incidentally all Invited Participants) for the enormous amount of work and thought they had put into the development process. He also specifically thanked Cherry Allison and André Punt for the tremendous support they provided. He noted that this was the second *SLA* that had been developed by the SWG under the auspices of the Scientific Committee and he thanked them as a whole for the atmosphere of co-operation was always been present, even when there are genuine scientific differences of opinion at the various stages of the development process. He believed that a continuation of this mode of working will be essential if the SWG is to address successfully the most difficult case it has faced, that of the Greenland fisheries.

DISCUSSION AND RECOMMENDATIONS

In response to a question from Sweden about what might happen if no surveys occur for longer than a 10-year period, the Chair of the SWG referred to the discussions on the AWS that had been presented two years ago and are available in *Ann. Rep. Int. Whal. Commn.* 2002: 74-75. In summary, the ‘grace period’ process would be evoked whereby, unless an agreed abundance estimate was forthcoming, then the block limit for the following block would be half that for the present block, after which it would revert to zero. In response to a question from the UK about the appropriateness of the GUP2 approach, the Chair of the SWG reiterated that, as in the case of the *Bowhead SLA*, the *Gray Whale SLA*, the Scientific Committee noted that from an MCDM perspective it is a perfectly valid approach and it noted the benefits of the inbuilt check-balance by merging two quite different procedures.

In conclusion the Sub-committee endorsed the report and recommendations of the Scientific Committee.

3.1.1.2 GREENLANDIC FISHERIES (IWC/56/REP 1, ITEMS 8.3, 8.4)

The Chair of the SWG reminded the meeting that an urgent need for a Greenland Research Programme had been first identified in 1998. This is primarily due to the lack of recent abundance estimates and the poor knowledge of stock structure. It will be extremely difficult, if not impossible, to develop an *SLA* for the Greenlandic fisheries that will satisfy all of the Commission’s objectives without such information. This is particularly important in the light of the Scientific Committee’s grave concern at its inability to provide management advice for these fisheries.

He separated out this item into four main issues: stock structure; abundance estimates; biological data and *SLA* development. With respect to the former, the problem was that although the available information suggested that the animals found off West Greenland did not comprise either separate fin or common minke whale stocks, the identity and size of the complete stocks is unknown. The Committee has agreed to follow a two-step process to further the essential work needed to provide information suitable for management; namely an initial simulation study to focus appropriate genetic analyses.

¹ Grand Unified Procedure.

² Multiple criteria decision-making.

In this regard, he noted that the Scientific Committee has previously strongly recommended that genetic samples be taken for all of the catch. However, the numbers for 2003 were very low (12 minke whale and 1 fin whale), even though it is mandatory under local regulations to return a sample from each whale that is caught. The Committee expressed disappointment at the lack of progress in obtaining genetic samples, although it noted new procedures were in place. It repeated its strong recommendation that samples for genetic analysis be collected from the catch as a matter of very high priority. It urged the Commission to encourage the Government of Denmark and the Greenland Home Rule authorities to assist with logistical and, if necessary, financial support. Finally, it encourages Greenlandic scientists to investigate other potential sources of samples. It also welcomed the news that some 50 samples are available from the eastern USA and Canada and it urged that these be analysed.

With respect to abundance estimates, the Chair of the SWG noted that, last year, the Committee had strongly recommended that a traditional aerial cue-counting survey be carried out in summer 2003 in Greenland. For logistical and financial reasons it had not been possible to undertake such a survey, but some valuable experimental work had been carried out in 2003 that had been fully discussed. Greenlandic scientists presented a plan for a full aerial photographic (not cue-counting) survey this summer. The Committee had noted the great need for new abundance estimates and, in order to facilitate presentation of appropriate analyses as quickly as possible, had established an intersessional advisory group. The Chair of the SWG noted that the difficult environmental conditions (notably fog and high winds) in Greenland made the undertaking of successful surveys problematic.

The catch data for 2003 were: 6 landed fin whales (2 M and 4 F), with 3 struck and lost; 178 landed West Greenland common minke whales (58 M, 117 F, 3 unknown sex) and 7 struck and lost; and 13 landed East Greenland common minke whales (1 M, 11 F, and 1 unknown sex). An analysis of recent catch data will be provided to the next Committee meeting.

In terms of developing an *SLA*, the Chair of the SWG was pleased to report that three papers, albeit preliminary, had been presented and that these will help to provide a framework for future work. The differences between the relatively 'easy' data-rich cases of the bowhead and gray whales and the data-poor Greenlandic cases, may warrant a different approach to the examination of the trade-off between risk and need satisfaction and the Committee will develop such a statistic to add to the list of those it normally considers. The issues will be considered in depth at the next SWG meeting.

The SWG had also considered how best to proceed with the development of one or more *SLAs* for Greenlandic aboriginal whaling, given the continuing uncertainties about stock structure, abundance, and mixing in the region. One approach would be to postpone *SLA* development until more and better data become available. The SWG rejected this approach, instead believing that *SLA* development was a matter of considerable urgency. The SWG intended to develop the best *SLA(s)* it could given the data available, and noting the potential of the simulation approach to help identify appropriate data collection programmes, it recognised that it might become necessary to improve the *SLA(s)* at future Implementation Reviews when more

information is available. The Committee had endorsed this approach. The Chair of the SWG advised that issues related to management advice would be presented under later Agenda Items (4.3 and 4.4).

3.1.2 Discussion and Recommendations

After this exchange of views, the Chair summarised that the Sub-committee endorsed all recommendations of the Scientific Committee on these items.

New Zealand stated that what has occurred with regard to data provision by Greenland is unsatisfactory. New Zealand suggested that the Commission has an obligation to probe what has caused this situation and what can be done about it. The annual take of fin and minke whales has created serious difficulties, and Scientific Committee has been unable to provide scientific advice. Despite the Scientific Committee's efforts, very little has been achieved to improve the knowledge of the Greenland stocks. New Zealand was concerned that this year, Greenland reported to the Scientific Committee that they had only provided one genetic sample from six fin whales taken. New Zealand questioned whether it is now time to impose restrictions on the catch quota for Greenland. They then asked Denmark what explanations they had and how they intended to remedy this situation, which given the Scientific Committee advice, is a very urgent one.

Denmark responded that information on the importance of returning samples has been given to the hunters. Only one sample from a fin whale, and 12 from minke whales have been returned in 2003. The Home Rule Government regrets the low number of samples collected. For the 2004 season, letters and phials have been sent to the municipalities, and when issuing licenses, the municipal officers hand out phials to the hunters. The Home Rule Government also works to improve the collection of samples in cooperation with the hunters association and by making a press release, so that the information is conveyed. The UK expressed its concern with this response. The UK recognised that the policing of the hunt was difficult, but stated that the conditions under which ASW is enabled to take place in Greenland are known to the hunters, and were included in licences. The UK felt that non-compliance with conditions required more than a slap on the wrist.

3.2 Aboriginal Whaling Scheme (AWS)

3.2.1 Report of the Scientific Committee (IWC/56/Rep 1, Item 8.2.6)

The Chair of the SWG noted that at the 2002 meeting, the Committee had developed generic scientific aspects of an aboriginal whaling management scheme that would be used in conjunction with the case specific *SLAs*. (These had been reported in detail to this Sub-committee but no agreement had been reached on these by the Commission.) This year, as last, the Committee again recommends these to the Commission. They are specified in *Ann. Rep. Int. Whal. Commn. 2002: 74-75*. The Chair of the SWG will be happy to spend time explaining these further with interested delegations at any time.

3.2.2 Discussion and recommendations

Australia recognised that the focus of discussion was on science, but sought to register its concern over whaling management regimes. This Sub-committee should give equal attention to management considerations as to the scientific considerations. The USA stated that they have previously expressed concerns over certain provisions of

the AWS and that their reservations should continue to be noted.

After this exchange of views, the Sub-committee endorsed the recommendations of the Scientific Committee on these items.

4. ABORIGINAL SUBSISTENCE WHALING CATCH LIMITS

4.1 Bering-Chukchi-Beaufort (B-C-B) Seas stock of bowhead whales

4.1.1 Report of the Scientific Committee (IWC/56/Rep 1, Item 9.1)

The Chair of the SWG noted that this year, the Scientific Committee had undertaken an in-depth assessment of the B-C-B bowhead whales. Considerable focus had been given to the question of stock structure and a number of papers were presented that were facilitated by the provision of data under the Committee's new data availability agreement. The Committee agreed that substantial progress has been made in investigating possible stock or population structure among B-C-B bowheads but that there is insufficient information at this stage to fully support or fully refute the hypothesis of a single stock; in fact it is premature to reject any of the hypotheses, or even to draw conclusions about their relative plausibility. The Committee was pleased to receive information on an extensive research programme to address this issue further.

The Scientific Committee also received information on traditional assessment methods, not to provide management advice per se but as a way of examining whether 'reality' was still within the parameter space tested in the trial structure of the *Bowhead SLA*. It was noted that stock structure issues applied equally to these methods as to the use of the *Bowhead SLA*.

Catch information was provided for 2003 by the USA: a total of 41 bowhead whales were struck resulting in 35 animals landed. The efficiency (the ratio of the number landed to the number struck) of the hunt was 85%, which is higher than the average efficiency over the past 10 years (77%). Of the 35 landed whales, 17 were females and the sex was not determined for one whale. Of the 17 females, 5 were presumably mature (>13.4m in length). Three of these large females were closely examined; two had recently given birth and the other was not pregnant.

In addition, there was a Russian harvest of three male bowhead whales in Chukotka waters.

In terms of management advice, the Scientific Committee agreed that the future Implementation Review of bowhead whales will include stock structure issues as a major component. This Implementation Review will examine the robustness of the *Bowhead SLA* with respect to plausible stock hypotheses via simulation trials. If shown to be necessary, this may result in changes to the *Bowhead SLA*. Such an Implementation Review will begin at the 2006 Annual Meeting, with a view to ensuring that management advice at the 2007 meeting is based on the best science then available. The Committee also recommended that a report on the progress of the research programme should be provided each year to the Scientific Committee and it encourages cooperative research amongst the various interested research groups.

The Scientific Committee also noted:

- (1) the continuing increase in the abundance estimates derived from the census under the recent catch limits and record high calf counts;
- (2) the spatio-temporal distribution and opportunistic nature of the hunt and the low numbers of whales struck annually in St. Lawrence Island and Chukotka; and
- (3) the development of an extensive research programme that will address questions of stock structure and allow the formulation of one or more plausible stock structure hypotheses.

Given these factors, the Committee agreed that the *Bowhead SLA* remains the most appropriate tool for providing management advice for this harvest, at least in the short-term, and consequently the results from the *Bowhead SLA* (see IWC/56/Rep 1, Item 9.1.4) indicate that no change is needed to the current block quota for 2003-2007.

4.1.2 Discussion and recommendation

The USA noted the collaborative efforts of US scientists with scientists of other countries, particularly Russia, Norway and Japan. They also noted the recommendation of the Scientific Committee on the need for additional research on the bowhead stock identity issue. The USA is committed to undertaking this research so that by 2007, when the bowhead quota is next reviewed, its management will be based upon the best science available at that time.

Japan asked the USA if it could provide Japan with the baleen plates of bowhead whales caught by the Alaskan hunters. In response, the USA agreed to discuss this issue with Japan outside of the Sub-committee. The Russian Federation stated that during this IWC meeting the USA and Russia intend to sign a Memorandum of Understanding and also intend to start work in 2004 on genetic research, as well as biological research. Russia intends to engage in as much joint research as is possible, although it noted that CITES requirements may impose difficulties on what is possible. Switzerland drew the attention of the Sub-committee to the fact that at COP 12 of CITES in Santiago (Chile), a resolution was adopted aiming at facilitating transboundary movement of sensitive biological samples such as scientific research materials for conservation purposes, and that the CITES Management Authorities should be made aware of IWC transboundary issues if the need arises.

After this exchange of views, the Sub-Committee endorsed the recommendations of the Scientific Committee on these items.

4.2 North Pacific Eastern stock of gray whales

4.2.1 Report of the Scientific Committee (IWC/56/Rep 1, Item 9.2)

Twenty-two Chukotka aboriginal whaling organisations submitted requests for harvesting a total of 167 gray whales. However, according to permit regulations of the Russian Federation Ministry of Natural Resources, only 135 permits for gray whales were distributed among aboriginal whaling organisations and native settlements. A total of 126 gray whales (70 males and 56 females) were taken in 2003 and two gray whales were struck and lost.

New information on calf counts from the northbound migration and the breeding lagoons in Mexico was presented. The Committee was encouraged to hear that calf production remains at the mid-range of pre-1999 levels

(after low levels in 1999, 2000, 2001). In 2002, the Scientific Committee had carried out an in-depth assessment of the Eastern North Pacific stock of gray whales and agreed that a take of up to 463 whales per year is sustainable for at least the medium term (~30 years), and is likely to allow the population to remain above *MSYL*. No information was presented this year to change that advice. The Committee was also pleased to receive the Gray Whale *SLA*, noting that this now represents its best look for providing management advice.

4.2.2 Discussion and recommendations

There was no discussion on this item. The Sub-Committee endorsed the recommendations of the Scientific Committee.

4.3 and 4.4 Minke whale stocks and West Greenland Stocks of fin whales off Greenland

4.3.1 and 4.4.1 Report of the Scientific Committee (IWC/56/Rep 1, Item 8.5)

The Chair of the SWG reported that this was an important issue in the Scientific Committee's deliberations this year. As it has stated on many occasions, the Committee has never been able to provide satisfactory management advice for either the fin or minke whales off Greenland. This reflects the lack of data on stock structure and abundance and is the reason for the Committee to first call for the Greenland Research Programme in 1998. He noted that the Commission's financial contributions to the programme had been aimed at testing the feasibility of large-scale biopsy sampling and satellite telemetry in order to try to obtain information on both abundance and stock structure. Unfortunately, for a number of reasons, these both proved unsuccessful. He clarified that the Commission's funds had not been used towards aerial surveys, noting that these are considerably more expensive than the Commission normally provides funds for.

The Scientific Committee stressed that its inability to provide any advice on safe catch limits is a matter of great concern, particularly in the case of fin whales where the best available abundance estimate dates from 1987/88 and is only 1,096 (95% CI 520-2,100). That for West Greenland minke whales dates from 1993 and is 8,371 (95% CI 2,400 – 16,900).

Obtaining adequate information for management must be seen as of very high priority by both the national authorities and the Commission. The Committee urged the Commission to encourage the Government of Denmark and the Greenland Home Rule authorities to provide the necessary logistical and financial support. Without such adequate information, the Committee will not be able to provide safe management advice in accord with the Commission's management objectives, or develop a reliable *SLA* for many years, with potentially serious consequences for the status of the stocks.

The Scientific Committee recommended that every effort be made to ensure that the number of samples collected from the catch in 2004 will be very considerably higher than in 2003 and close to 100%. It also strongly recommended that these and all existing samples held in Greenland be analysed as soon as possible in accordance with guidance to be given by the intersessional working group.

The Scientific Committee drew attention to the grace-period provision that it had agreed previously in the context

of a general aboriginal whaling scheme (although it has not yet been accepted by the Commission) associated with agreed *SLAs*. As shown in IWC/54/5 Appendix 4, under such a provision, catch limits would begin to be phased out 10-14 years after an abundance estimate was last obtained and catches would revert to zero at the end of the five-year period during which the catch limit would have been half the previous block. The Committee has not previously suggested that such a grace-period should have started for fin whales. However, it drew attention to the fact that if it had, such a period would now be nearing completion.

It is with great concern that the Scientific Committee advised the Commission that in the absence of an agreed abundance estimate for fin whales arising out of the 2004 survey, it will likely recommend immediately that the take of fin whales off West Greenland be reduced or eliminated. If, as hoped, an abundance estimate is obtained, the Committee will review this next year in its formulation of management advice.

4.3.2 and 4.4.2 Discussion and recommendations

The Chair summarised that the situation is serious especially for fin whales, and that a reduction of the quota might be considered.

With regard to the financial questions, Denmark explained that the Home Rule Government has given financial support for survey projects between DKK 1.2-1.4 million annually for the years 2002-2004. Between 1998-2003, a total of 301 samples have been collected making it about 50 per year. 166 samples have been analysed in 2003. There are 200 samples in the freezers to be analysed. Results from the samples have been published in the Marine Ecology Progress Series. There has been disappointingly little discussion of these results in the SWG, but Greenland hopes to receive some guidance from the SWG on the best directions for future analyses. Greenland is therefore looking forward to a project to be undertaken this winter, in cooperation with the SWG. A simulation study of possible connections between minke whale stocks will provide guidelines that will guide the analysis of the samples in the freezers and the coming samples. On the question of reduction of the current quota of fin whales, Greenland suggested that the Scientific Committee is not the right body to decide such a reduction. Greenland suggested it would be strange if quotas would be reduced due to bad weather this August and expressed their hope that the weather was with them in August. In conclusion, the Greenland Home Rule Government stated that it intended to increase its efforts to gain more samples as recommended in cooperation with the hunters organisation. The UK noted Denmark's remarks with interest but stated that this was not the first time this problem had arisen. The Scientific Committee recommendations were in the strongest terms the UK had seen. The UK felt that the Commission would need to agree to take action on the quota if data were not made available. Australia concurred with the UK in noting that the Scientific Committee wording was unprecedented, and suggested that the Scientific Committee concerns should be reinforced by this Sub-Committee.

Argentina expressed concern because the sex ratio of the Greenland's minke hunt is highly female biased: on average, 72% of all minke whales killed in Greenland since 1986 were female. Argentina asked Greenland why it believes the bias occurs and what might be the solution to

this problem? Denmark answered that this kind of question has been raised before. Nevertheless, they explained again that sex selection is impossible to enforce in Greenland due to both weather and ocean conditions.

New Zealand questioned whether the answer given by Denmark was sufficient. They noted that the information given showed a high female sex bias (72% for all minke whales caught in Greenland and 92% for East Greenland minke whales since 1996). New Zealand was concerned that the preferential removal of females could significantly affect the regenerative capacity of the stock. It would be helpful for Greenland to provide information on the date, location and sex of every whale taken, to show precisely what is going on. These issues raise fundamental questions of accountability that go to the centre of the integrity of the legal instrument under which the Commission operates. The time for accountability has arrived.

Germany stated that more information about what was going on was required, and were appreciative that this matter will be followed up next year. They also appreciated the strong recommendations given by the Scientific Committee relating to the failure of abundance estimates. Germany suggested that this is clearly a matter which the Commission has to follow up on.

The UK expressed its concern about sex bias, and remarked that if a degree of sex bias was inevitable, it raised some very important questions about the sustainability of the hunt. Switzerland agreed with the UK, suggesting that if the harvest is overtly biased on females, questions of sustainability must arise.

With respect to the female bias in the catch, the Chair of the SWG clarified that it is common for minke whales to segregate both geographically and temporally by sex in the North Atlantic. The sex bias in the catch is longstanding and earlier attempts to model the animals off West Greenland showed that if the minke whales found there comprised a complete stock they would already have become extinct. The sex bias in the catch probably reflects the sex ratio in the waters there and not any selectivity by whalers (which in any case is not possible). He noted that the Committee was expecting a paper on recent catches (both geographical and temporal by sex) at its next meeting.

Greenland explained that the information on the seasonal distribution of the harvest suggests northward movement in early part of hunting season and a southern movement in the autumn, so that the hunting season, which is in any case short, is even shorter in the northern part of the area of distribution of minke whales in West Greenland. Analysis has not so far shown differential distribution of the two sexes. They suggested that knowledge of this bias is long standing and not recent. This bias suggests that this is probably a part of a larger stock, whose boundaries are uncertain.

After this exchange of views, the Sub-Committee endorsed the recommendations of the Scientific Committee on these items.

4.5 North Atlantic humpback whales off St. Vincent and The Grenadines

4.5.1 Report of the Scientific Committee (IWC/56/Rep 1, Item 8.6)

The Chair of the SWG reported that in recent years, the Scientific Committee has examined the stock structure of humpback whales in the North Atlantic. It is most plausible

that the animals from St. Vincent and the Grenadines are part of the West Indies breeding population (ca 10,750 in 1992). However, further data to confirm this are desirable and the Committee repeated previous recommendations that every effort be made to obtain photographs and genetic samples from St. Vincent and the Grenadines. The Scientific Committee was disappointed not to receive information on whether or not any catches had been taken last year. There were no scientists from St. Vincent and the Grenadines present at the meeting and no national progress report had been submitted. However, it noted that the genetic analyses of at least three samples from caught animals is being conducted. It was also pleased to hear that sightings cruises are taking place in the region and looked forward to receiving a report in the future.

The Commission has adopted a total block catch limit of 20 for the period 2003-2007. The Scientific Committee agreed that if the humpback whales are part of the West Indies breeding population, this catch limit will not harm the stock.

4.5.2 Discussion and recommendations

The UK did not dispute the Scientific Committee recommendations, but urged the need for further data. The UK suggested that if not identified as part of the West Indies stock, there could be ramifications on the stock. Australia understood that St. Vincent and the Grenadines passed new whaling regulations in December 2003, and asked whether a copy of this legislation had been submitted to the Secretariat as is required, and whether it had been found to be consistent with the draft legislation presented to the IWC. The Chair of the SWG indicated that this matter was usually dealt within in the Infractions Sub-Committee, but he would investigate this situation. The Chair noted that St. Vincent and the Grenadines were not present.

5. SCHEDULE PARAGRAPH 13

The Chair drew attention to Document IWC/56/4 and asked the Russian Federation to introduce the item. The Russian Federation explained that at IWC/55 in Berlin last year, they had drawn attention to what it considered anomalies in the way that the Chukotka peoples are treated compared with other aboriginal groups and proposed changes to the Schedule to address these inconsistencies. However, after discussions within the Aboriginal Subsistence Whaling Sub-Committee and in the Commission, the Russian Federation agreed to withdraw its proposed Schedule amendments and to work intersessionally on this issue. To this end, the Commission agreed that a small group (comprising of the Russian Federation, Denmark, Australia and the USA, working with the Secretariat) should work intersessionally by email to review Schedule paragraph 13 to determine how consistency in approach to ASW operations could be achieved and to propose a Schedule amendment for review and decision-making at IWC/56. A report from this group, together with proposed Schedule revisions is available as IWC/56/4.

The Small Working Group agreed that all the provisions governing aboriginal subsistence whaling operations are understood to be, and should be, included in paragraph 13 of the Schedule. Should the Commission decide to harmonize the ASW Schedule language, the group recommends considering the creation of one option concerning the prohibition on the taking of calves and whales accompanied by calves. A new sub-paragraph could

be inserted in the general principles governing this form of whaling to read as follows:

'13. (a) (4) It is forbidden to strike, take or kill calves or any whale accompanied by a calf.'

The Small Group agreed that nothing in the Russian Federation's proposal to amend Schedule paragraph 13 was intended to allow for commercialisation of aboriginal subsistence whaling. The native peoples never harvested whales for commerce. The native peoples use the predominant portion of the products for their own needs and only an insignificant part is exchanged or used for transactions with other communities.

The words 'when the meat and products of such whales are to be used exclusively for local consumption' in sub-paragraphs 13(b)1, 13(b)2, 13(b)3 and 13(b)4 means that some transaction beyond the aboriginal whaling communities under the current Schedule language are acceptable. The definition of aboriginal 'subsistence use' was adopted by the Cultural Anthropology panel of the IWC Meeting of Experts on Aboriginal/Subsistence Whaling in February 1979 (IWC Special Edition 4, 1982) and provided that:

- (1) the personal consumption of whale products for food, fuel, shelter, clothing, tools or transportation by participants in the whale harvest;
- (2) the barter, trade or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural or economic ties. A generalised currency is involved in this barter and trade, by the predominant portion of the products from such whales are ordinarily directly consumed or utilised in their harvested form within the local community; and
- (3) The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.

The Russian Federation indicated that the words '...the aborigines whose traditional aboriginal subsistence and cultural needs have been recognised,' in sub-paragraph 13(b)(2) is not related to the right of native peoples in taking gray whales, but, rather, to the right of native peoples in using harvested gray whales. These kind of limitations in the use of meat and products of whales do not exist in the other sub-paragraphs of Paragraph 13. A representative of the Chukotka native peoples explained that the existing condition leads to paradoxical situations where in different villages, even in the same village, and even for the same person, people have different rights in using legally harvested gray and bowhead whales. This situation violates human rights and discriminates against native peoples of Chukotka.

It was agreed by the Small Group that aboriginal communities in Chukotka, which have a quota to take gray whales and bowhead whales, have equal rights to other aboriginal communities that have Aboriginal Subsistence Whaling quotas to use the meat and products of these whale species.

The Small Group noted that the proposal to delete the words – 'whose traditional aboriginal subsistence and cultural needs have been recognised' – from Schedule sub-

paragraph 13(b)(2) was intended to reflect this equality of rights.

The Russian Federation noted that any limitations of human rights of entire peoples, especially minority native peoples, are an extremely delicate question, with great ethical and political implications. In relation to these issues, the Russian Federation asked the delegations of Contracting Governments to be politically correct in their discussion, and expressed a preference that the ASW Sub-Committee recommend that the Commission include an item on its agenda to adopt the Report of the Small Group and adopt the proposal to amend the Schedule paragraph 13 by consensus.

5.1 Discussion and recommendations.

The Chair summarised that the proposal suggests a new Para 13(a)4, a deletion of the relevant sentences in Para 13(b) as well as the deletion of the phrase 'whose traditional aboriginal subsistence and cultural needs have been recognised'.

The USA thanked the Russian Federation for their leadership of the small group. They noted that although the group represented different views, they had reached consensus on the report, and encouraged the Sub-committee to accept the report in the same spirit. The UK congratulated the Small Group on its work. Although the UK generally had no difficulty with the report it was uneasy about the suggested solution. The UK fully accepted that the rights of Chukotka people should be exactly the same as other indigenous peoples, regardless of the whales taken, but stressed the obligation to ensure that for ASW operations the products are in large measure, or totally, used for the people whose needs have been acknowledged. As such, the UK would be inclined to delete the 'objectionable' part from the end of the paragraph, and put it at the top of the section, so as to apply equally to all indigenous whaling operations. Australia emphasised the need for the Russian Federation to explain to the Commission precisely how the current Schedule provisions discriminate against the native peoples of Chukotka in practice. Australia also pointed out that recommending adoption of the report, is not the same as accepting the Schedule amendments.

Grenada expressed support for the proposal by the Russian Federation in as much as it is aimed at producing a more uniform code for ASW, thereby qualifying equality and respecting human rights for each of the four ASW operations. However, with regard to the stated aim of providing equality of rights the wording of the proposed Amendment of the paragraph 13 of the Schedule, Grenada wondered why only St. Vincent and the Grenadines of the four ASW operations is required to conduct whaling according to national legislation. Does this mean that the other three ASW schemes are not required to follow national laws? The Chair of the SWG replied that it was his understanding that all nations have to enact national laws, in accordance with the Convention. Grenada then stated that in the interests of uniformity, fairness and human rights either the sentence singling out of St. Vincent and the Grenadines should be deleted, or the requirement to whale according to national legislation should be inserted into the appropriate subsections of paragraph 13 (b)(1),(2) and (3) for each of the four ASW schemes.

Austria raised a question of clarification on the striking of the phrase 'whose traditional aboriginal subsistence and cultural needs have been recognised.' Whilst it may be correct to strike that here, where does this sentiment remain anchored in the International Convention for the Regulation of Whaling (ICRW)? Does striking it mean that all future, new applications for aboriginal quotas no longer need to demonstrate that they fulfil these criteria? New Zealand agreed with Austria and felt that Russia had made a compelling case, and that Russia ought not to be subject to the problems outlined here. The issue, however, is whether the current proposed drafting will provide the required results. New Zealand suggested that a possible solution would be to place the phrase on the recognition of need at the top of paragraph 13, as an over-riding principle for all IWC-approved ASW operations. New Zealand stated that the recognition of cultural need was at the heart of the aboriginal whaling, and that the language that it was proposed to delete had been included as a result of the Makah quota request and was needlessly confused by the allocation of a block quota.

The USA responded to the intervention from the UK by stating that the phrase in question is not necessary, and the position of the USA is that the Commission itself recognizes needs when it approves a quota request. The USA noted, in response to the intervention by New Zealand, that the Commission recognised the needs of the Makah Tribe in both 1997 and 2002 when it approved requests for quotas put forth on their behalf.

The Republic of Guinea expressed their support for the Russian Federation's proposal. Australia explained that it was their understanding that appropriate tests of need should continue be applied. Japan stated that it could support the sentiments contained in the proposal but had some questions on it. The first question was why the proposed 13(a)(4) states 'any whale accompanied by a calf'. It should, in the Japan's view, be 'female' whale. The second question was how to define the cultural needs. It stated that Japan has long-standing cultural needs for whales dating back to 9,000 BC and that those needs had been satisfied through commercial whaling and are being satisfied to some extent by the byproducts from research whaling activities which is perfectly legal under the ICRW. Australia noted the fine balance of this report, and the need to treat this matter with some delicacy. Australia suggested that the proposals by Japan could upset this balance. Benin expressed their support for the Russian Federation and invited the Committee to review the proposals of the Russian Federation.

The Chair concluded that the Sub-Committee takes note of the report IWC/56/4 and records that the issue had not been fully resolved. She reminded the Sub-Committee that the Russian Federation's new proposal is a Schedule Amendment and has to be officially proposed in the Plenary to be either adopted by consensus or, if this is not possible, a three quarters majority vote.

The Russian Federation did not agree with the Chair's conclusion and qualified that the issue was resolved in the Sub-Committee.

The Small Group recommended that the report and the proposal to amend the Schedule be put forward to the Plenary. The Sub-Committee supported this recommendation.

While there may not have been consensus in the Sub-Committee, the Russian Federation pointed out that based on the interventions there seemed to be agreement that there exists a problem of unequal rights among native people and that this problem should be resolved. The Russian Federation noted that since this is an aboriginal subsistence issue it should be resolved by consensus and that no one should provoke voting on an aboriginal question. The UK stated that it had not proposed the additional sentence(s), merely that between now and Plenary, it would need to reflect on whether they were necessary or not.

Australia pointed out that despite these discussions, there is no disagreement with the report. Australia further noted that no alternative text has been put forward for the report itself. Nonetheless, it was still an open question whether members should support a Schedule amendment text.

Japan raised the question why St. Vincent and the Grenadines were not represented on the Small Working Group. Australia explained this was because it was a small volunteer group, and St. Vincent and the Grenadines had not volunteered.

The Chair repeated that the issue will have to be brought forward to the Plenary and recommended that the respective countries meet to discuss some of the proposed modifications before the Plenary.

6. OTHER MATTERS

There were no other matters raised.

The Chair thanked the Sub-Committee for its constructive and efficient work.

7. ADOPTION OF REPORT

The Report was adopted at 17:00 on Friday 16 July 2004 by correspondence.

Appendix 1

LIST OF PARTICIPANTS

Antigua & Barbuda

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Argentina

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Australia

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Stephen Powell
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Michael Stachowitsch

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Michael Kingsley
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Seiji Ohsumi
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Republic of Korea

Chang Myeng Byen
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Mexico

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Valery Knyazev
Ivan Slugin
John Tichotsky

St. Lucia

Vaughn Charles

Solomon Islands

Sylvester Diake
Paul Maenu

South Africa

Herman Oosthuizen
Horst Kleinschmidt

Spain

Santiago Lens
Carmen Asencio

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UK

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Geoff Jasinski
Laurence Kell
Jenny Lonsdale
Trevor Perfect
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Roger Eckert
Robert Brownell
Keith Johnson
Nathan Pamplin
Jean Pierre Plé
Gary Rankel
Rolland Schmitten
Dave Sones
Michael Tillman
Chris Yates
Brad Smith
Thomas Napageak
George Ahmaogak

Chair of Scientific Committee

Doug DeMaster

Secretariat

Nicky Grandy
Greg Donovan

Appendix 2

AGENDA

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| <ol style="list-style-type: none"> 1. Introductory items <ol style="list-style-type: none"> 1.1 Appointment of Chair 1.2 Appointment of Rapporteur 1.3 Review of Documents 2. Adoption of the Agenda 3. Aboriginal subsistence whaling scheme <ol style="list-style-type: none"> 3.1 Aboriginal Whaling Management Procedure (AWMP) <ol style="list-style-type: none"> 3.1.1 Report of the Scientific Committee 3.1.2 Discussion and Recommendations 3.2 Aboriginal Whaling Scheme (AWS) <ol style="list-style-type: none"> 3.2.1 Report of the Scientific Committee 3.2.2 Discussion and Recommendations 4. Aboriginal subsistence whaling catch limits <ol style="list-style-type: none"> 4.1 Bering-Chukchi-Beaufort Seas stock of bowhead whales <ol style="list-style-type: none"> 4.1.1 Report of the Scientific Committee | <ol style="list-style-type: none"> 4.1.2 Discussion and Recommendations 4.2 North Pacific Eastern stock of gray whales <ol style="list-style-type: none"> 4.2.1 Report of the Scientific Committee 4.2.2 Discussion and Recommendations 4.3 Minke whale stocks off Greenland <ol style="list-style-type: none"> 4.3.1 Report of the Scientific Committee 4.3.2 Discussion and Recommendations 4.4 West Greenland stock of fin whales <ol style="list-style-type: none"> 4.4.1 Report of the Scientific Committee 4.4.2 Discussion and Recommendations 4.5 North Atlantic humpback whales off St. Vincent and The Grenadines <ol style="list-style-type: none"> 4.5.1 Report of the Scientific Committee 4.5.2 Discussion and Recommendations 5. Schedule Paragraph 13 6. Other matters 7. Adoption of the report |
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