

## Annex E

# Chair's Proposals for a Way Forward on the RMS

### SUMMARY OF CHAIR'S PROPOSAL FOR AN RMS 'PACKAGE'

A small group comprising myself, Denmark, Iceland, Japan, the Netherlands, Spain, Sweden, the USA and the Secretariat met twice in Cambridge. Based on the very constructive discussions held, I would like to bring a proposal forward for consideration by the whole Commission on how to take us forward towards an RMS. I believe that an effective RMS is essential both for the wise management and conservation of whale stocks; the present stalemate is not conducive to either.

The proposal included in this document and summarised below is based on the principle of compromise and respect of the various viewpoints held by Commission members within a framework that ensures that the rules and regulations of the Commission are obeyed and seen to be obeyed in an efficient and cost-effective manner. This will involve use of both the Schedule and voluntary measures such Resolutions and codes of conduct (issues requiring Schedule text are shown with an asterisk below).

#### ELEMENTS OF A PROPOSED RMS 'PACKAGE'

1. **RMP\***: as agreed by the Scientific Committee and endorsed by the Commission.
2. **A phased-in approach to the resumption of commercial whaling\***: for an initial period (e.g. 5 years after the lifting of the moratorium), commercial whaling would only be allowed in waters under national jurisdiction.
3. **National inspection and observation scheme\***: as proposed by the EDG (generally, observers and inspectors on all boats where practical) with VMS on very small vessels with < 24hr trips and one observer per catcher attached to a factory ship.
4. **Additional catch verification to combat IUU whaling and/or unreported bycatches (NOT to monitor trade)**:
  - National diagnostic DNA registers and market sampling to agreed standards (with outside review) and a procedure to allow checking of samples against the registers\*
  - Resolution urging countries to institute national legislation prohibiting the import of whale products from non-IWC countries as well as from IWC countries that are non-whaling
  - Documentation up to port of entry if importation from IWC member \*
5. **Compliance\***: Compliance Review Committee with duties as developed by the RMS EDG and agreed by the Commission, and inclusion of Schedule text as proposed in Berlin:
  - 'The Compliance Review Committee reports on infringements and the seriousness of these infringements to the Commission and advises the Commission what actions, if any, to be taken'.
6. **Mechanism to apportion RMS costs among Contracting Governments\***: costs for national activities should be borne by relevant national governments, while international costs for securing transparency could be allocated in the context of the overall financial contributions scheme.
7. **Measures for the lifting of Paragraph 10(e)\***: modify paragraph 10(e) such that it becomes invalid on a specific day whilst ensuring that any whaling operations are undertaken under the full RMS package (N.B. catches other than zero can only be set for species/areas the Scientific Committee provides advice for under the RMP – currently very few).
8. **Whaling under Special Permit**: recognise that it is a Sovereign right under the Convention but develop a Code of Conduct.
9. **Animal welfare considerations**:
  - Explicit recognition of the issue in the Schedule\*:
    - 'The hunting of whales shall be undertaken so that the hunted whale does not experience unnecessary suffering and so that people and property are not exposed to danger.'
    - Resolution focusing on improving techniques, voluntary provision of data to regular scientific workshops and possible co-operative research programmes.

This 'package' of measures includes, in some way, all but two of the elements that have been discussed recently in the context of the RMS. The exceptions are blanket trade restrictions and sanctuaries. While some form of trade restriction might be appropriate in deterring IUU whaling, I believe that a blanket ban on international trade in whale products would be discriminatory against some countries, against principles of free trade, and outside the competence of IWC. With respect to sanctuaries, each should be reviewed on its own conservation and management merits and would therefore be difficult to build into any RMS 'package'.

If the Commission reacts favourably to my proposals in Sorrento, recognising that they are of course open to discussion, then I believe it should be possible to have firm proposals ready for adoption at the meeting in 2005. This will however require substantial intersessional activity of both a technical and policy nature.

## **PREFACE TO CHAIR'S PROPOSALS – WHY AN RMS IS NEEDED**

The 1946 International Convention for the Regulation of Whaling clearly gives IWC a dual mandate, i.e. both the conservation and the management of whaling and whale stocks; these are not mutually exclusive but directly inter-related. It is for the following reasons that I believe that an RMS is essential for the credibility of the IWC.

It is a fact that whales are being caught by some IWC members. While recognising and respecting the different views on whaling held by member nations, from the point of view of conservation and wise management, it is best that whaling is managed using a scientific, consistent and fair approach. The highly migratory behaviour of the large whales makes international co-operation on management essential and the IWC is best placed to fulfil this management role. However, at present our organisation is not generally seen to be working effectively and indeed the present polarised views and actions are, I believe, detrimental to conservation.

The IWC Scientific Committee spent several years developing the RMP - the most advanced method for the conservation and management of a natural resource. This procedure was developed specifically for baleen whales with the aim of maintaining all whale stocks at healthy levels and avoiding the problems identified with past scientific management approaches, particularly by taking scientific uncertainty specifically into account in accordance with the Precautionary Principle. As already mentioned, this approach was agreed by the Commission in 1994 but has not yet been implemented. If implemented

today, the RMP would only allow catches of some stocks of minke whales. It would not result, contrary to popular opinion in some countries, in a 'free for all' on all stocks of all whale species.

As has been recognised since at least 1992, effective conservation and management measures developed using the RMP must be accompanied by a modern supervision and control system (i.e. the RMS) that ensures that those measures are not only obeyed, but are seen to be obeyed. However, despite some nine years of discussions, agreement on the RMS has still not been reached.

I strongly believe that if the IWC is to fulfil its role in the conservation and management of whale stocks and to avoid past errors, real effort must be made to complete the RMS expeditiously. To do this parties must respect the views of others, and in that light, develop a package of measures that is as broadly acceptable as possible whilst meeting the agreed objectives in the most practical and cost effective manner. Building on the progress made in a number of important areas and working in good faith, it should be possible to rapidly complete this work, thereby ensuring the conservation and management of whale stocks for the future, restoring the credibility of the IWC as an effective organisation and providing an example of how modern natural resource management should be carried out. Failure to put an RMS in place will jeopardise the future of the IWC and serves neither the interests of whale conservation nor management.

## **CHAIR'S PROPOSALS FOR A WAY FORWARD ON THE RMS**

### **1. INTRODUCTION**

Following the adoption of the 'moratorium' on commercial whaling in 1982, that came into effect in 1986, the Scientific Committee spent several years developing the Revised Management Procedure (RMP). The RMP is a conservative scientific method for determining safe catch limits that explicitly takes scientific uncertainty into account. The Commission adopted the RMP in 1994, but agreed that it would not be implemented until a Revised Management Scheme (RMS) was completed. In addition to the RMP, the RMS was to include measures to ensure that regulations were obeyed, primarily via an updated and revised national inspection and International Observer Scheme (IOS). Subsequent discussions of what the RMS should contain have included the need for catch verification measures in addition to those within an IOS and the collection of animal welfare data. Additionally, related issues such as limiting catches to waters under national jurisdiction, trade restrictions, scientific permits, sanctuaries and the relationship between completion of the RMS with Schedule paragraph 10(e) have also been discussed – many of these having been introduced as part of the 'Irish Proposal' brought forward in 1997 as a way to help overcome the impasse that developed within IWC following adoption of the moratorium.

Many Contracting Governments have spent considerable time and effort over the years on RMS discussions. Despite the fact that progress has been made in some areas, particularly with the inspection and observation scheme, there has been no progress in others and hence no overall agreement. This has led to increasing frustration among Contracting Governments and accusations as to who was responsible for the delay. At last year's Annual Meeting in Berlin, a private meeting of Commissioners was neither able to make recommendations regarding possible components of an RMS or on how to take the RMS process further.

During the plenary meeting, the Commission did, however, agree to my proposal to convene a small group of my choosing to explore ways and possibilities of taking the RMS process forward. I subsequently invited Denmark, Iceland, Ireland, Japan, the Netherlands, Spain, Sweden and the USA to take part. All except Ireland were able to accept. Ireland had to decline due to pressures of work associated with the lead-up to Ireland's presidency of the EU starting January 2004.

The 'Chair's Small Group' (CSG) met at the Secretariat's offices in December 2003 and again in March 2004. The discussions were very productive and based on their outcome, I would like to bring some thoughts and

proposals forward for consideration by the whole Commission. I was heartened that the CSG operated in a spirit of openness with a desire to understand the differing points of view on RMS-related issues, without assigning dishonest or underhand motives where there was disagreement. All recognised the current problems within the Commission stemming from a lack of mutual trust and agreed that it was vital that these are overcome if the Commission is to fulfil its mandate. Similarly, there was widespread recognition that all must be willing to compromise to reach an agreement that is broadly acceptable; any compromises must of course still enable the objectives of the RMS (see below) to be met.

In the Preface to this document, I have explained why I believe an RMS is needed. In the following pages I reiterate the framework and objectives against which an RMS should be developed, review the major obstacles to completing the RMS that remained at the Berlin meeting, including general ideas on how they might be overcome, outline a possible RMS 'package' and touch on possible next steps. I use the phrase RMS 'package' since it is clear from past discussions that resolution of the RMS will necessarily involve the inclusion of some elements not strictly related to ensuring that regulations are obeyed and seen to be obeyed.

## 2. THE FRAMEWORK AND OBJECTIVES FOR DEVELOPING AN RMS

For several years leading up to and including the meeting of the RMS Working Group at IWC/53 in London, discussions on the RMS had focused on trying to make progress largely through revisions to draft Schedule language (i.e. a 'square bracket exercise'). This meant that Schedule language was debated in isolation rather than within a framework looking at the RMS as a 'whole'. This approach changed with the establishment of the Expert Drafting Group (EDG) at IWC/53 when a framework was developed that established objectives for an RMS. This framework has provided an objective way to develop and evaluate proposals, and has been instrumental during the development of the proposals I outline in this document.

### *The EDG framework*

The EDG agreed that the primary objectives of any IOS scheme are to:

- (1) ensure that the rules and regulations of the Commission are obeyed;
- (2) ensure that the rules and regulations of the Commission are seen to be obeyed;
- (3) report to the Contracting Government any infractions of those rules and regulations; and
- (4) report to the Commission any infractions of those rules and regulations.

In developing a scheme to meet these objectives, account must be taken of:

- (1) certain desired features of any credible combined scheme, including that it be to the extent possible robust, independent, transparent and based on best practice;
- (2) the need for the scheme to be as simple, practical and cost-effective as possible, concomitant with meeting its objectives; and
- (3) the nature of likely future operations (whilst noting that any scheme must be sufficiently generic to be able to incorporate new vessels, etc. without modification).

The following progression was used to structure its discussions:

- (1) identify the nature of the regulation or information required;
- (2) determine appropriate method(s) to monitor the regulation;
- (3) assess efficiency and practicality of method(s);
- (4) select most appropriate;
- (5) determine whose responsibility to ensure method is used and who uses it;
- (6) determine reporting hierarchy; and
- (7) determine who pays.

Using this approach, the drafting of Schedule text is left until considerable agreement has been reached on a particular issue or indeed on the whole RMS 'package'.

## 3. OBSTACLES TO COMPLETING AN RMS AND HOW THEY MIGHT BE OVERCOME

The elements that have been discussed as possible components of an RMS and related issues are given in the table below. The status of discussions on all elements and issues as of the 55th Annual Meeting in Berlin is summarised in Document IWC/56/COMMS 3.

### Main potential elements of the RMS

#### *Scientific*

RMP – including:

- Survey guidelines;
- Total catches over time.

#### *Non-scientific*

Chapter V: Supervision and Control

- Vessels, points of landing, processing plants
- National inspection schemes
- International Observer Scheme
- Verification of catch data
- Costs
- Oversight/compliance

Chapter VI: Information Required

- Scientific information
- Animal welfare data

#### *Related issues under discussion*

- Relationship with paragraph 10(e)
- Limiting catches to national waters
- Trade restrictions
- Special Permits
- Sanctuaries

There is consensus within the Commission that the RMS should at least include the RMP (including the agreed survey guidelines<sup>1</sup> and together with provisions to adjust catch limits to account for other human-induced mortalities to ensure that removals over time do not exceed limits set

<sup>1</sup> In Resolution 1996-6, the Commission agreed to accept as a component part of the RMS the 'Requirements and Guidelines for Conducting Surveys and Analysing Data within the Revised Management Scheme'. Since then, the Guidelines have been revised slightly by the Scientific Committee and the RMP text has been revised to include the following paragraph: the only estimates of abundance acceptable for use in the Catch Limit Algorithm are those obtained in accordance with the most recent version of the 'Requirements and Guidelines for Conducting Surveys and Analysing Data within the Revised Management Scheme'.

by the RMP<sup>2</sup>), an inspection and observation scheme, some form of compliance monitoring and a mechanism to apportion costs of any RMS among member countries. However, lack of agreement remains concerning not only the details of some of these 'agreed' elements (particularly the cost-sharing arrangement) but also on which other elements should be included as part of the 'package'.

The major obstacles now remaining are:

- the relationship between the RMS and Paragraph 10(e);
- whether additional catch verification measures beyond those provided by the inspection and observation scheme are necessary;
- how RMS costs should be apportioned among member countries;
- whether commercial catches should be limited (at least initially) to waters under national jurisdiction;
- whether restrictions should be placed on international trade;
- whether animal welfare data should be collected;
- whether there should be any link/relationship between the RMS and special permits; and
- whether there should be any link/relationship between the RMS and sanctuaries.

Section 3 below summarises the status of discussions on these particular issues up to and including IWC/55 and presents ideas emerging from discussions within the CSG on how obstacles may be overcome.

### 3.1 The RMS and Schedule paragraph 10(e)

#### *The issue*

The most important obstacle revolves around the relationship between the RMS and Schedule paragraph 10(e). To date the views expressed on this relationship have ranged from:

- (1) agreement on the RMS should result in simultaneous deletion of paragraph 10(e) from the Schedule and catch limits other than zero should be established based on the advice of the Scientific Committee; to
- (2) even though an RMS is agreed, paragraph 10(e) should remain until such time as the Commission takes action to remove it.

Rationales for these opinions varied from the view that an RMS is meaningless if no whaling is allowed on stocks for which the RMP would set a catch limit other than zero, through a lack of trust that countries may object to one or more provisions of an RMS and thus not be bound by them, to the view that whaling should not be allowed but that an RMS should be in place in case a three-quarter majority is in favour.

#### *Towards resolution*

Aside from the view of some member governments that commercial whaling is always unacceptable, the primary concern that has been expressed is that if adoption of the RMS is simultaneous with the lifting of the moratorium, there is a possibility that a whaling nation might exercise its right to object to one or more of the RMS provisions and thus be able to whale legally but outside the RMS. However, as noted at the October 2002 private Commissioners' meeting on the RMS, practical ways to

address this concern can be found, e.g. the addition of a clause to paragraph 10(e) such that it becomes invalid on a specific day, provided that no objections to the RMS provisions have been received. During discussions within the CSG, there was a general feeling that a simple provision that meant that even a single objection (be it from either a pro- or anti-whaling country) could frustrate a widespread agreement to the twin objectives of lifting paragraph 10(e) and ensuring that whaling occurs under a full RMS was not acceptable. Further thought is needed to design a provision that ensures that these twin objectives are met.

### 3.2 Catch verification

#### *The issue*

The National Inspection and International Observer Scheme (IOS) as foreseen by the EDG (IWC/54/RMS 1) will provide for the checking of catches taken by authorised vessels under the jurisdiction of IWC member countries. However, some governments have proposed that additional catch verification measures, such as DNA registers/market sampling and/or catch documentation are necessary. At the October 2002 private meeting of Commissioners, it was noted that some form of catch verification can provide additional valuable information in the context of:

- RMP requirements with respect to total catches/human-induced mortalities over time – especially with regard to non-IOS monitored mortalities such as bycatches, IUU fishing etc; and
- the questions of ensuring that regulations both are obeyed and are seen to be obeyed.

A working group on catch verification was therefore established to explore the matter further. The working group met in Antigua in April 2003 (IWC/55/COMMS 3) and reached broad agreement on the following issues:

- the Inspection and Observation Scheme (IOS) would satisfy the requirements that the regulations are obeyed and are seen to be obeyed for registered IWC operations;
- there are advantages in an RMP context, to some additional catch verification (e.g. with respect to IWC illegal vessels, non-IWC vessels with and without export to IWC countries, and other removals such as illegal (i.e. unreported) bycatch);
- DNA/market sampling (DNA/MSS) systems and catch documentation schemes (CDS) share many of the same attributes but differ in terms of cost, ease of fraud and instant checking – however, while there are no features of a CDS that cannot be fulfilled by a DNA/MSS, the reverse is not true;
- if DNA registers are used there is no need to have a single IWC registry (i.e. national registries could be continued) provided common standards (techniques and laboratories) are met;
- if a DNA/MSS is used, some form of audit at all stages is necessary from the perspective of transparency;
- any market sampling would require careful design; and
- if DNA registers are used, samples for testing must be submitted via governments or appropriate intergovernmental organisations to avoid fraudulent claims.

The working group did not agree on:

<sup>2</sup> At IWC/52 the Commission endorsed text on total catches over time – see section 3.7.

- whether both DNA registers and a Catch Documentation Scheme (CDS) might be needed. Some thought application of both systems would be duplicative, others that they would be complementary. However, in the absence of a specific proposal, there has been some confusion over what is intended in relation to the form and scope of any CDS, e.g. should it be to the point of import or through to the consumer (product labelling); and
- the need for and level of, international/independent oversight of a DNA/MSS if used – and who might provide such oversight.

#### *Towards resolution*

No further progress was made during IWC/55, but considerable time was spent discussing catch verification by the CSG. From these discussions it is clear that the objectives of a catch verification scheme are to ensure that:

- (1) IWC commercial catch limits (and other regulations) are not exceeded by member countries; and
- (2) total anthropogenic removals (direct catches and bycatch) are not exceeded (both in terms of IWC and non-IWC countries) – this involves obtaining information on their levels.

The aim is NOT to monitor trade *per se*.

For vessels registered by Contracting Governments, the EDG's IOS proposal will provide internationally verified information on all aspects of the catch (including quota monitoring) required by the IWC (position, sex, date etc.). However, for vessels from IWC member countries operating illegally or vessels from non-member countries (i.e. IUU whaling) there clearly will be no inspectors/observers and consequently other measures will be needed to detect/deter such operations. Similarly, measures would be needed to detect/deter unreported bycatches.

Given the above, the CSG broadly recognised the value of some combination of the following additional catch verification measures:

- diagnostic DNA registers and market sampling – against the background that national registers meeting the requirements of the Scientific Committee are already in place in Japan and Norway;
- some form of catch documentation – recognising that at present, whale products require CITES export/import permits and that these should be taken into account in the development of any further documentation;
- national regulations only allowing importation of whale products from other IWC countries with DNA registers – recognising that while regulations about trade in whale products are outside the IWC's remit, there is some precedent since the Commission did adopt a Resolution at its 31st Annual Meeting in 1979 that resolved, among other things that 'all member nations shall cease immediately any importation of whale meat products from, and the export of whaling vessels and equipment to non-member countries and operations'. Japan already has national legislation prohibiting the import of whale meat from non-IWC member countries as well as from IWC countries that are non-whaling. It also prohibits importation of whale meat from whales taken in violation of IWC regulations.

#### **PROCEDURE FOR CHECKING SAMPLES**

An agreed specified system for submitting samples to the register(s) for 'checking' must also be developed to prevent fraudulent claims of illegal products being found. Under this system it is proposed that:

- (1) samples must be submitted via national governments or appropriate intergovernmental organisations with proof of origin of the samples; and
- (2) analysis must follow agreed techniques in approved laboratories.

#### **3.3 Costs**

##### *The issue*

There is general agreement that there should be an element of cost-sharing, i.e. that some of the costs of an RMS should be paid by the Commission who would then recover these costs through a 'factor' in the financial contributions assessed from Contracting Governments. The October 2002 private Commissioners' meeting established a small working group to explore and recommend to the Commission how this 'factor' might be defined, and in particular how a fair balance between the interests of whaling and non-whaling countries could be determined. The working group met in Antigua in May 2003 (IWC/55/COMMS 4). It agreed that there were four main elements to the costs of an RMS:

- (1) national inspectors;
- (2) international observers;
- (3) vessel monitoring systems; and
- (4) catch verification.

Cost estimates were developed for each element, although in relation to catch verification, estimates could only be developed for DNA registers/market sampling since no definite proposal for a Catch Document Scheme had been made.

The working group did not reach agreement on how costs might be apportioned among Contracting Governments, although there was general agreement that the costs of national inspectors should be paid by the flag state (with the exception where, as foreseen in the EDG proposal for the IOS, an individual acts as both national inspector and international observer when it may be appropriate for some cost sharing).

The working group also did not reach agreement on RMS costs and the overall financial contributions scheme. Two options were considered:

- (a) factor them into the financial contributions scheme; or
- (b) have them as a separate budget item.

The group did agree, however, that addressing the issue of RMS costs should not undermine the principles guiding the work of the Contributions Task Force (CTF) and its efforts to date, particularly with respect to reduced costs for developing countries.

The working group believed it had achieved as much as it could given the uncertainties involved.

In Berlin, Commissioners noted the usefulness of having broad cost estimates for the observer scheme and DNA registers/market sampling, even if both entailed considerable assumptions. All members recognised that the costs were significant in terms of the IWC budget, although some believed they were not large in the 'market' context. As with catch verification, there was no agreement

in the Commissioners' meeting as to whether sufficient progress on this issue had been made, although the meeting noted that it is difficult to discuss the question of overall costs in isolation from the question of who shall pay.

#### *Towards resolution*

The issue of costs and how they might be apportioned was touched on during the discussions of the CSG, but was not discussed extensively. The group felt that the major cost elements of the RMS would be associated with:

- National inspectors;
- International observers;
- DNA registers and market sampling;
- Some sort of (trade) document scheme.

VMS was not included in this list since the small group is proposing that VMS is only required on small boats making only day-trips and with room for neither an inspector or observer aboard (see Section 5 and Appendix 1).

While further discussions is necessary about how costs are apportioned, the CSG considered that further consideration could be based on the general principle that costs for national activities be borne by relevant national governments, while international costs for securing transparency could be allocated in the context of the overall financial contributions scheme - as indicated in the following table.

Cost element	Who pays
National inspectors	Appropriate member countries
International observers	The Commission, in accordance with a Financial Contributions Scheme
VMS	Appropriate member countries
DNA registers + market sampling:	
set-up and running of systems	Member countries with DNA registers
oversight/review of national systems	The Commission, in accordance with a Financial Contributions Scheme
Checking	The country requesting the checking

### **3.4 Restricting whaling to national waters/area limitations**

#### *The issue*

The proposal to restrict whaling to within EEZs, at least for a limited period prior to allowing 'full' whaling, was made principally as a measure to boost public confidence in IWC's ability to manage whaling successfully following the overexploitation of the past. While this proposal has been supported by some, possible difficulties have been raised by others. For example, some consider that a blanket closure of the high seas to exploitation may be contrary to UNCLOS. Concerns have also been expressed that in the present atmosphere of mistrust, any time-limit provision may be reminiscent of the 1990 'deadline' in paragraph 10(e) (i.e. that the restrictions would not be lifted at the appointed time). Others have noted that restricting catches to national waters in some circumstances would reduce yield and would be even more cautious than the already extremely cautious RMP. Finally some have observed that such a provision may also increase supervision and control difficulties since small-scale coastal activities can be more difficult to monitor than large-scale offshore operations.

#### *Towards resolution*

During the October 2002 Commissioners' RMS meeting, there had been the suggestion that the concept of area restrictions could be included as a recommendation embodied within a Resolution rather than a Schedule requirement and it was agreed to consider this approach further at a later date. During discussions of the CSG, the view was expressed that some sort of phased-in approach to commercial whaling could be useful and that this might be achieved through initial area limitations in the context of RMP *Implementations*, such that in the first five years after the lifting of paragraph 10(e), catches are restricted to within national waters.

### **3.5 Trade restrictions**

#### *The issue*

The proposal to restrict trade in the meat and products of whales taken to local consumption only (i.e. no international trade to be allowed). Its reasons were two-fold:

- (1) that past trade pressures were partly responsible for overexploitation of whale resources; and
- (2) as part of the 'confidence-building' exercise.

Although initially proposed as a permanent measure, Ireland had indicated more recently that it could be time-limited.

Although there has been some support for this proposal, strong opposition has also been voiced. Those opposing the proposal believe that such a ban is:

- (a) discriminatory against countries with small populations;
- (b) against principles of free trade; and
- (c) outside the competence of IWC.

They believed that public confidence should be built via other mechanisms.

#### *Towards resolution*

The potential problems with a blanket ban on all international trade were recognised by the CSG. However, it was noted that under some circumstances, certain trade measures might be appropriate, for example to combat IUU fishing, as is done by some fisheries management bodies such as CCAMLR and ICCAT).

### **3.6 Animal welfare data**

#### *The issue*

Currently, information on animal welfare (weapons used, time-to-death, etc.) is provided to the Commission on a voluntary basis. Some years ago however, the UK, with support from other member governments, proposed that the collection of animal welfare data should be a requirement of the RMS and included in the Schedule. It proposed a list of data to be collected. Other governments have raised three difficulties with this issue:

- (1) the competency of IWC to address animal welfare;
- (2) whether or not such information is necessary; and
- (3) lack of trust.

With respect to the last point, some countries have noted that even the discussion of the data currently provided voluntarily are used in a wholly negative manner by some, rather than being used for constructive discussion on how to improve killing methods. Given this experience, they

believed that the status quo of voluntary reporting should be continued.

#### *Towards resolution*

During discussions within the CSG, it was recognised that despite the opposing views, animal welfare is clearly an issue that needs to be addressed. The group noted that the principle that whaling should not inflict unnecessary suffering had already been agreed in discussions concerning the potential revised Schedule (see paragraph 13 of IWC/54/RMS 2). Two additional suggestions were made. One was that collection of data should not be considered mandatory as part of the 'package', but facilitated by including in the duties of international observers an item along the lines that they should 'collect such data that the Commission from time to time might request'. These data would not necessarily be the full list proposed by the UK. The other suggestion that received broad support, was that rather than requiring collection of comprehensive animal welfare data on all whaling vessels as a Schedule requirement under 'Information Required', there could be dedicated well-designed scientific programmes to improve whale killing methods, with the results being discussed at scientific workshops.

### **3.7 Special permits**

#### *The issue*

In addition to area and trade restrictions, some have called for the phasing out of whaling under special permit. This aspect was touched upon briefly at the October 2002 private Commissioners' meeting. At that meeting, different views were expressed as to the need for any link/relationship between scientific permit catches and the RMS. While some Contracting Governments continue to support scientific whaling and its value for management and other important issues, others believe it to (1) be no longer necessary and (2) to be taking place on a larger scale than foreseen when the Convention was negotiated. Nevertheless, the right under Article VIII of the Convention for Contracting Governments to take whales for research purposes under scientific permit is not disputed and the suggestion was made at the October 2002 meeting that some sort of voluntary code of practice could be developed governing the conduct of scientific whaling. It was envisaged that this would not form part of the RMS but would be a document to which the IWC and others could refer.

#### *Towards resolution*

The concept of a voluntary Code of Conduct as a way to address the concern some governments have with special permit whaling was taken further during the discussions within the CSG. It was suggested that such a code might include certain features that research programmes should have and that it would need to be developed by scientists. This code might also increase the level of participation of scientists from other countries in the design and conduct of the research programmes. This could include, for example, holding an international workshop before designing a given research programme to improve the scientific review process and to avoid the research proposals, currently presented for review to the Scientific Committee a relatively short time before being implemented, being seen as a 'fait accompli'.

The CSG identified two scenarios exist for special permit catches: (1) special permit catches upon

species/stocks for which an RMP *Implementation* has been completed; and (2) those for which no *Implementation* has been completed. In the former case, the RMP explicitly takes into account catches under special permit by taking them off the 'commercial' catches as follows:

'Catch limits calculated under the Revised Management Procedure shall be adjusted downwards to account for human-induced mortalities caused by aboriginal subsistence whaling, scientific whaling, whaling outside IWC, bycatches and ship strikes.

Each such adjustment shall be based on an estimate provided by the Scientific Committee of the size of the adjustment required to ensure that total removals over time from each population and area do not exceed the limits set by the Revised Management Procedure. Total removals include commercial catches and other human-induced mortalities caused by aboriginal subsistence whaling, scientific whaling, whaling outside IWC, bycatches and ship strikes, to the extent that these are known or can reasonably be estimated.' (*Ann. Rep. Int. Whaling Comm.* 2000: 32).

While a 'code of conduct' would be applicable for the first scenario, it would be particularly appropriate for the second.

### **3.8 Sanctuaries**

#### *The issue*

The Irish Proposal called for sanctuaries to be respected, and concern is often expressed by some regarding the whaling that is occurring within existing sanctuaries. Others consider that sanctuaries within the IWC context are playing a different role than in other fora, i.e. they are seen as a way to achieve a global ban on commercial whaling rather than as a management tool. During discussions within the CSG, there was a suggestion that the existing IWC sanctuaries could be reviewed in the context of certain Marine Protected Areas (e.g. that had core areas, areas of limited use, etc), but in the end the general view was that sanctuaries would be a difficult issue to build into any 'package' and that it would be best to stick to the *status quo*.

### **4. DEVELOPING AN RMS 'PACKAGE'**

Given the discussions held to date on the RMS, including the constructive and positive discussions held within the CSG, I believe the time is right for the Commission to make real and directed progress towards an RMS. The Preface to this document outlines what I believe is an incontrovertible case for the timely adoption of an RMS from the twin standpoints of conservation and wise management. I recognise that this will require an atmosphere of trust and mutual understanding that has appeared to be lacking in recent IWC meetings. I have been encouraged and heartened by the constructive nature of discussions within the CSG despite the very different opinions held on a number of key issues. Given that, I have developed what I believe to be a fair and realistic proposal for the essential ingredients of an RMS package for consideration now by the whole Commission. The proposal is, of course, open to discussion. As its cornerstone is the RMP that I believe still represents the most advanced and well-tested scientific approach to the management of natural resources; it is considerably more conservative than measures that we all accept in other national and international management regimes. Inevitably, not every detail of this package will satisfy every member nation – that is inherent in the concept of compromise. However, in my proposal I have endeavoured to respect to the extent possible the various viewpoints held by Commission

members within a logical framework that ensures that the rules and regulations of the Commission are not only obeyed but also seen to be obeyed in an efficient and cost-effective manner.

#### 4.1 Elements to include in the RMS 'package'

Following from the above, I would like to commend to the Commission the following as elements to include in an RMS 'package'. Some elements are appropriate to be incorporated as part of the Schedule, while others could be best addressed using voluntary measures such as Resolutions and codes of conduct. However, the proposal is for a package as a whole; it is the combination of all of these elements that I believe best meets the objectives for the RMS agreed by the EDG. It is my hope that such a package will be able to receive broad support from Commission members.

##### *Elements to be incorporated as part of the Schedule*

- The RMP (including survey guidelines and provisions for total catches over time).
- A phased-in approach to commercial whaling.
- A national inspection and International Observer Scheme.
- Additional catch verification measures.
- Compliance.
- A mechanism to apportion RMS costs among member countries).
- Measures for the lifting of Schedule paragraph 10(e).

##### *Elements to be dealt with primarily via Resolutions and similar measures*

- Whaling under special permit.
- Animal welfare considerations.

This 'package' of measures includes, in some way, almost all of the elements that have been discussed recently in the context of the RMS. The exceptions are blanket trade restrictions and sanctuaries. As indicated earlier, while noting that some trade restrictions might be appropriate in the context of deterring IUU whaling, I recognise the strength of the view that a blanket ban on international trade in whale products would:

- (1) be discriminatory against countries with small populations;
- (2) be against principles of free trade; and
- (3) be outside the competence of IWC.

In addition, such a ban would not appear to further the conservation and wise management of whale stocks in addition to the RMS package proposed. With respect to sanctuaries, these are provided for under the Convention and should be reviewed on their conservation and management merits. They would therefore be difficult to build into any RMS 'package'.

An outline of the different elements and an indication of where significant further work is required is provided in the next section.

#### 4.2 Description of RMS 'package' elements

##### *4.2.1 The RMP*

The RMP as agreed by the Scientific Committee and endorsed by the Commission should be used to set commercial whaling catch limits. In effect all catches will be zero until the Scientific Committee has completed an *Implementation* for a particular species and area. The

Committee cannot begin an *Implementation* without instructions from the Commission. In the present atmosphere of mistrust, safeguards are needed to ensure that non-scientific methods are not used to delay/prevent *Implementation* work (in either the Commission or the Committee) as well as to ensure that it is carried out with appropriate scientific rigour.

##### **FURTHER WORK**

The Scientific Committee is already working on guidelines relating to the level of information needed to begin and complete an *Implementation* as well as the time such a process should take. I have asked the Secretariat to explore (with appropriate members of the Scientific Committee) how such provisions could be built into the RMP (and thus into the Schedule).

##### *4.2.2 A phased-in approach to the resumption of commercial whaling*

I believe that some sort of phased-in approach to commercial whaling could be useful in building public confidence in the IWC's ability to manage whaling and conserve whale stocks. This is not to imply either that the RMP is not safe or that there will be immediate widespread whaling on all species around the world. I suggest that the best approach would be by phasing-in the areas in which commercial whaling would be allowed and propose that when whaling resumed, it would initially (e.g. for a 5-year period) be within waters under national jurisdiction of member countries. Safeguards would be needed to make sure that this would only be a temporary measure, such as a clear sunset clause in the Schedule text. One option for such text might be:

'Notwithstanding the catch limits by Small Area shown in Table 2, whaling will be restricted to waters under the national jurisdiction of the relevant Contracting Governments until 1 January 200X. After that date, this restriction will no longer be in effect.'

##### *4.2.3 A national inspection and International Observer Scheme*

This would be as proposed by the EDG (where, in general, observers and inspectors are placed on all boats where practical), and include the proposals made by the CSG on VMS and observers on catcher vessels (see Annex), i.e. VMS on very small vessels with < 24hr trips and one observer per catch vessel attached to a factory ship.

##### *4.2.4 Additional catch verification measures (involves Schedule amendments and a Resolution)*

I propose that additional catch verification measures involving national diagnostic DNA registers/market sampling systems and import controls should be included in the RMS to ensure that IWC removal limits are not exceeded by IUU whaling and/or unreported bycatches.

##### **DNA REGISTERS/MARKET SAMPLING**

DNA registers/market sampling systems should form the major part of the catch verification system. They should have the following attributes:

- national diagnostic DNA register for each whaling country or group of countries (to agreed specifications) to avoid redundancy and additional costs; and
- designed market sampling system (to agreed specifications).

##### **TRANSPARENCY**

While DNA registers and market sampling (DNA/MSS) will meet the objective of regulations being obeyed, a level

of transparency attached to these systems is required to meet the objective that regulations are seen to be obeyed. There are varying interpretations of the competency of the Commission with regard to international trade and the monitoring of domestic markets and, even though the objective of the catch verification scheme is not concerned with the monitoring of trade *per se*, any arrangement for securing the transparency of the catch verification system must take this into account to be broadly acceptable.

Transparency could be obtained in a number of ways. For example, the IWC Scientific Committee has already reviewed the specifications for the existing national registers and approved them. Formal specifications could thus be drawn up by the Committee in conjunction with those involved in the existing registers. National governments could agree voluntarily to provide relevant updated information on the registers. Similarly, national governments could allow outside review of the design of domestic market sampling programmes and protocols for voluntary submission of data. Further discussion on this matter is required (e.g. the nature of the outside review and the composition of any expert groups).

#### FURTHER WORK

Specifications for the DNA/MSS need to be developed and agreed, as does a system to provide transparency/oversight. For the former it is likely that an expert group will need to be established to develop proposals for review by the Scientific Committee and the Commission. For the latter, the Secretariat has been asked to draft a discussion paper outlining a series of options.

A system for submitting samples to the register(s) for 'checking' must be developed to prevent fraudulent claims of illegal products being found. In developing such a system, consideration must be given to whether such samples are checked against the national registers themselves, or whether Contracting Governments should provide the genetic profiles of each individual whale in their registers in confidence to an outside body in a pre-specified electronic format (a small technical group would be required to develop detailed specifications). The latter would allow the comparisons to be compared independently from the national database. Such a system could provide a simple yes/no answer to whether a sample is from an animal in a diagnostic register.

#### NO IMPORTATION OF WHALE PRODUCTS FROM NON-IWC COUNTRIES OR FROM ILLEGAL OPERATIONS

Preventing the import of whale products from non-IWC countries or from illegal operations of boats registered in IWC countries is an essential element of the catch verification approach. I suggest that this is done in two ways:

- a Resolution agreeing that Contracting Governments will institute national legislation prohibiting the import of whale products from non-IWC countries as well as from IWC countries that are non-whaling (such legislation already exists in some countries such as Japan);
- a system of catch documentation to the point of entry/landing.

With respect to the latter it is clear that some form of documentation will be required by national governments at the point of entry to show that the products come from whales caught legally by an IWC country. Whale products not accompanied by such a document would not be allowed

to be imported. While it is the responsibility of national governments to decide what documentation they would require when products are being imported, it would be valuable to develop an IWC *pro forma* that takes into account (1) the FAO harmonised trade document and CITES documentation (which is currently required), and (2) sensitivities regarding IWC's competency to address trade issues.

I do not believe that documentation/product labelling once a product has entered an IWC country is necessary given other measures in place.

#### FURTHER WORK

A new Resolution concerning national legislation prohibiting the import of whale meat from non-IWC countries as well as from IWC countries that are non-whaling needs to be drafted. The Secretariat has been asked to review existing relevant Resolutions and to draft a consolidated version.

With respect to catch documentation, the Secretariat has been asked to examine CITES documents and the FAO proposal for a harmonised trade document with the view to developing an IWC *pro forma* if considered necessary.

#### 4.2.5 Compliance

A Compliance Review Committee would be established with the duties as developed by the EDG and agreed by the Commission (IWC/54/7 and IWC/55/COMMS 2). Under the Convention, it is clear that it is the responsibility of relevant Contracting Governments and not the IWC to impose penalties and I propose that the recommendations of the Compliance Working Group from IWC/55 be followed, i.e. that the following text be included in the Schedule: 'The Compliance Review Committee reports on infringements and the seriousness of these infringements to the Commission and advises the Commission what actions, if any, to be taken'.

#### 4.2.6 Apportioning RMS costs among Contracting Governments

Clearly more discussion is needed on how RMS costs should be apportioned, but I recommend that it is based on the general principle that costs for national activities be borne by relevant national governments, while international costs for securing transparency could be allocated in the context of the overall financial contributions scheme - as indicated below.

Cost element	Who pays
National inspectors	Appropriate member countries
International observers	The Commission, in accordance with a Financial Contributions Scheme
VMS	Appropriate member countries
DNA registers and market sampling:	
set-up and running of systems	Member countries with DNA registers
oversight/review of national systems	The Commission, in accordance with a Financial Contributions Scheme
Checking	The country requesting the checking

#### FURTHER WORK

This is an issue that needs further discussion, as does the relationship with the work of the Contributions Task Force. The Commission has always recognised the interaction between the work of the Task Force and RMS cost discussions, but until now, the Task Force has been asked to develop a contributions formula that does not take future RMS costs into account. However, if the Commission

reacts favourably to my proposals for an RMS 'package', there will be significant implications for any revised contributions formula. Consequently, while the development of a revised contributions formula remains high priority for the Commission, I believe that it would be prudent to delay further work of the Task Force until the Commission has discussed the RMS in Sorrento and assessed any implications for the work of the Task Force. The Task Force had been scheduled to meet before IWC/56 to try to finalise a proposal for a revised contributions formula. However, given the above and after consulting with the Task Force members and the Advisory Committee it has been decided to postpone the Task Force meeting.

#### 4.2.7 Measures for the lifting of Schedule paragraph 10(e)

I do not believe that trying to finalise an RMS in isolation of discussions on paragraph 10(e) is appropriate, and consider that a way of linking agreement on an RMS with the lifting of paragraph 10(e) needs to be found. My preferred approach is to modify paragraph 10(e) such that it becomes invalid on a specific day whilst ensuring that any whaling operations are undertaken under the full RMS package as adopted by the Commission.

#### FURTHER WORK

Developing appropriate text to achieve this is not a simple task, and the Secretariat has been asked to develop some possible Schedule text and scenarios for consideration.

#### 4.2.8 Whaling under special permit

Recognising:

- (1) the right of governments under the Convention to issue special permits;
- (2) concern expressed by some regarding scientific whaling; and
- (3) the need to obtain as broad a consensus as possible on the RMS 'package'.

I believe that an appropriate approach would be to develop a voluntary 'code of conduct' for whaling under special permit as part of the RMS 'package'. Such a code might include certain features that research programmes should have, e.g. with respect to appropriate abundance estimates, improved participation of scientists from other countries in the design, review and conduct of research programmes, e.g. through international intersessional workshops.

#### FURTHER WORK

A draft code of conduct needs to be developed. I suggest that the group within the Scientific Committee that is

already working to consolidate existing guidelines is requested to develop recommendations for such a code.

#### 4.2.9 Animal welfare considerations

The differing opinions among Contracting Governments over the competency of IWC to address animal welfare issues should be recognised and taken into account.

I suggest that animal welfare considerations be addressed primarily through an initiative (perhaps by Resolution) to focus discussions within the Commission on improving the techniques to kill whales, based on (1) voluntary reporting of data as discussed at the Workshop in Berlin; and (2) the voluntary provision of information from existing research programmes (and/or the development of a co-operative research programme) at regular (e.g. triennial) specialist workshops).

In addition, the importance of taking animal welfare considerations into account should be explicitly recognised in the Schedule through the inclusion of text along the following lines:

'The hunting of whales shall be undertaken so that the hunted whale does not experience unnecessary suffering and so that people and property are not exposed to danger.'

### 5. POSSIBLE NEXT STEPS

A private Commissioners' meeting on the RMS is scheduled for the afternoon of Friday 16 July 2004 in Sorrento. This meeting will provide an opportunity for me to present and explain the rationale behind my proposals, for Commissioners to provide feedback and for the Commission to discuss next steps. I believe that the objective of these steps should be to work towards developing a draft final proposal for adoption at the meeting in 2005.

If the Commission wishes to take the work forward along the lines I propose, this will require substantial intersessional activity of both a technical and policy nature prior to the 2005 Annual Meeting. A number of intersessional meetings will be needed and could include a meeting of the CSG, meetings (2-3) of expert groups tasked with developing necessary details on certain aspects (as indicated above) and a private Commissioners' meeting. I believe that the intersessional work would best be progressed through private meetings. However, recognising the need for transparency to the wider IWC community and beyond, provision for an open meeting on the RMS (e.g. the RMS Working Group) should be included in the meeting schedule for IWC/57.

## Appendix 1

### Recommendations from the Chair's small RMS group concerning the International Observer Scheme

The small RMS group was able to address the two issues outstanding regarding the International Observer Scheme, i.e.:

1. Whether VMS is required on all vessels or, as proposed by the EDG, only on category (a) vessels, i.e. vessels that operate day trips (< 24 hours) only, carry out no substantial flensing on board and can accommodate neither a national inspector nor an international observer. For these vessels, the EDG agreed that a combination of VMS data transmitted in real-time to an observer at the point of landing is acceptable.

2. Whether, for pelagic operations, there should be observers on board each catcher vessel in addition to observers on board each factory ship.

The Chair's small RMS group recommends that:

- VMS is only required on category (a) vessels.
- One international observer would be deployed on each catcher boat attached to a factory ship. It was noted that as experience is gained, it may eventually be decided that observers are only needed on the factory ship.