

Annex H

Report of the Conservation Committee

Wednesday 14 July and Thursday 15 July 2004, Sorrento, Italy

1. INTRODUCTORY ITEMS

The meeting took place at the Hilton Sorrento Palace Hotel, Sorrento, Italy on the afternoon of 14 July and the morning of 15 July 2004 and was chaired by Horst Kleinschmidt (South Africa). A list of participants is given in Appendix 1.

1.1 Convener's opening remarks

Horst Kleinschmidt (South Africa) welcomed delegates and observers to the inaugural meeting of the Conservation Committee. He indicated that, upon the recent withdrawal from the Commission of Carlos Dominguez Diaz (Spain), who had agreed to convene the Committee, the IWC Chair had invited him to convene the Committee.

1.2 Election of Chair

Horst Kleinschmidt (South Africa) was elected Chair.

1.3 Appointment of rapporteurs

Stephen Powell (Australia) was appointed rapporteur.

1.4 Review of documents

The following documents were relevant to the discussions of the Committee:

- IWC/56/CC1: Revised Draft Agenda
- IWC/56/CC2: Overview of collaboration with other organisations (Secretariat)
- IWC/56/CC3: A proposal for voluntary national reports on cetacean conservation (Brazil)
- IWC/56/CC4: Statement regarding the Scientific Committee (DeMaster and Donovan)
- IWC/56/12: Funding considerations in relation to the Conservation Committee (Secretariat)
- Appendix 3: Report of the small group on the Conservation Committee
- Appendices I and II of CMS (CMS)

2. ADOPTION OF THE AGENDA

The agenda, as given in Appendix 2, was adopted without amendment.

As this was the inaugural meeting of the Conservation Committee, the Chair invited members to address general issues relating to the establishment and purpose of the new Committee before turning to specific agenda items. There was consensus that all members of the IWC should be and were committed to conservation, and that the new Committee should not supervise or duplicate the work of any other bodies of the Commission. However, a range of views were expressed about the appropriateness or otherwise of the steps taken to establish the Conservation Committee. It was agreed that efforts since IWC/55 to improve the level of communication between members in disagreement were important.

Many of the co-sponsors of Resolution 2003-1, by which the Committee was established, stated that the new body should be viewed as pro-conservation, not anti-whaling. These members recognised that the Convention provides for both conservation and management of whale stocks, and believed that the establishment of the Conservation Committee did not prevent the fulfilment of either of these objectives. The conservation of whale stocks was in the common interest.

These members held the view that the establishment of the Committee would not alter or in any way impinge upon the attributions or work of any of the Commission's active bodies, nor would it change any of the functions or terms of reference of such bodies, or of the Commission itself. Rather, the primary objective in setting up the Conservation Committee in their view was to rationalise the Commission's work on that part of its agenda that deals with conservation issues, as well as to institutionalise and better distribute the Commission's workload. They emphasised that the Conservation Committee would not have any supervisory function over the work of the Scientific Committee, which has its agenda and terms of reference clearly established by the Commission.

Those who had supported the establishment of the Committee looked forward to the Committee improving the way the IWC met its responsibility for managing whales, by addressing issues not only from the perspective of whaling. To date, conservation issues had been typically addressed late in the plenary, and the Committee would allow such issues to be discussed in detail several days before the plenary. The Committee could provide advice and guidelines on conservation-related functions that were currently dispersed, and serve as a central node to identify and prioritise topics. This might prevent overload on other bodies of the Commission.

Other members, who had opposed Resolution 2003-1, indicated that they still had reservations about the establishment of the Committee, especially because in their view it took the objective of the 'conservation of whale stocks' out of the context of the objective of making possible 'the orderly development of the whaling industry.' They were committed to the sustainable use of natural resources, and viewed completion of a Revised Management Scheme to prevent over-exploitation as a higher priority conservation measure than items that might be addressed under a Conservation Committee. Their participation in the first meeting should not be construed as change of position on the Resolution.

These members stated that the process used at IWC/55 to create a new body made no attempt to bring the members of the IWC together: a mechanism to address those conservation issues which are capable of attracting widespread support ought not to have been promoted in a manner which did not effectively consult nearly half of the members of the IWC. Some efforts to discuss alternative

language had been rejected out of hand, which was not conducive to open and fair dealings.

Those who had opposed the establishment of the Committee noted that, even if nothing in Resolution 2003-1 defined conservation narrowly, the wording of the Resolution and its appendix of past decisions of the Commission made it clear that the initiative would alienate nearly half of the members of the IWC. Nonetheless, members present who had opposed the process had decided to attend the first meeting, expecting a change to the name of the Committee and amendment of the original Resolution, in order to reciprocate their goodwill.

The Committee discussed the question of how to define 'conservation,' and particularly whether that should be construed as including 'sustainable use'. It was noted that various definitions were available, both from dictionaries (though there was no equivalent term in some languages), and in the texts and agreements of other treaties. While it was agreed that conservation was of interest to all members, and that further discussion on its definition would be worthwhile, a definitive answer was beyond the capacity of the Committee's first meeting. Some indicated that they had envisaged the Committee addressing issues that did not fit the remit of 'sustainable use,' while others would welcome further discussion on this.

It was noted that many members of the Commission were absent. This could be viewed as an indication of dissatisfaction with the process by which the Committee was established. Supporters of the Committee indicated that they were engaged in a constructive dialogue with some of the absent members, in the interest of seeking broad participation, and hoped that the Committee's report might demonstrate to them the value of the Committee.

3. DEVELOPMENT OF TERMS OF REFERENCE AND WORKING METHODS

3.1 Relationship between the Conservation Committee and other bodies within the Commission

Relationships between the Conservation Committee and other bodies within the Commission will be vital to the success and effectiveness of the new Committee. Relationships should be based on the principle of complementarity, not duplication.

The Chair of the Scientific Committee introduced IWC/56/CC 4, expressing the view that the actions and recommendations of the Conservation Committee will be of considerable interest to the Scientific Committee, and vice versa. The statement indicates that the proceedings of all of the Scientific Committee's sub-committees and working groups have relevance to conservation.

It was clarified that the paper was not discussed at or endorsed by the Scientific Committee. Rather, it was presented by DeMaster and Donovan to aid the Conservation Committee's discussions. The issue of relationships with the Conservation Committee had not been placed on the agenda of the Scientific Committee because it was not clear how this could occur until the 2004 meeting gave such guidance. Members viewed the table of conservation-related items addressed by the Scientific Committee as helpful (see Item 4.1 below), and some noted that the Conservation Committee presented an opportunity for the Commission to address the conservation-related

advice provided by the Scientific Committee more fully than in the past.

The Committee agreed that interactions with the Scientific Committee would occur in the same way that the Scientific Committee interacts with other subsidiary bodies already established by the Commission. As with the Aboriginal Subsistence Whaling Subcommittee and the first meeting of the Conservation Committee, the Chair of the Scientific Committee would attend and provide information on scientific matters that are germane to that body's work.

Relationships with the Technical Committee were also addressed. Some members viewed the reference to 'conservation' in the Rules of Procedure that relate to the Technical Committee as evidence of potential overlap with the Conservation Committee. Rule of Procedure M 7 might need to be changed to avoid duplication of functions. The alternative view was that appropriate delegation of responsibility could ensure complementarity: the Commission could refer to the Technical Committee the development of proposed management measures that the Commission considered for adoption into the Schedule (i.e. matters pertaining to Article V), while referring to the Conservation Committee the development of the conservation agenda and related proposed recommendations (i.e. matters pertaining to Article VI). There were also other views on these issues.

3.2 Proposed terms of reference

Resolution 2003-1 contained three terms of reference for the Conservation Committee:

- (1) the preparation and recommendation to the Commission of its future Conservation Agenda;
- (2) the implementation of those items in the Agenda that the Commission may refer to it; and
- (3) making recommendations to the Commission in order to maintain and update the Conservation Agenda on a continuing basis.

Many felt that these should guide the initial work of the Committee. The Committee should begin its work under these terms, and should develop additional terms if and when required. Further drafting work should proceed in an open process under the auspices of the Commission as a whole or its Chair.

Others who would prefer alternative terms of reference or who had not commented were encouraged to make specific proposals. Terms of reference for committees were typically brief, while the list of items to be addressed in the standing agenda of the Committee, generated separately, would be much more detailed.

In light of the concerns raised by those who had opposed Resolution 2003-1, a small group was formed to examine the language of the Resolution and further discuss terms of reference, outside of the Committee meeting. The group comprised the Netherlands (Chair), Australia, Iceland, Republic of Korea, Mexico, New Zealand and South Africa, and discussed concepts of conservation, ways to move forward after Resolution 2003-1, and terms of reference. The group agreed to the importance of addressing conservation in the IWC and to respect different views on whaling. Furthermore the group offered for discussion a collection of possible ways forward, including different ways of defining the concept of conservation, and various alternatives, including resolutions, that could

clarify the work of the new Committee, including addressing its connection to Resolution 2003-1 (Appendix 3). This discussion should be in an open process and should be open to all IWC members. Should intersessional discussion be required, this should occur via correspondence rather than intersessional meetings.

3.3 Proposed working methods

The Committee agreed to hold annual meetings, in line with the practice of other committees and working groups. The Conservation Committee would not normally meet intersessionally, other than by e-mail when necessary.

3.4 Funding considerations

Paragraph 8 of Resolution 2003-1 charged the Committee with beginning to explore the possibility of a trust fund to make resources available both to the Commission and to Contracting Governments to implement research related to the Conservation Agenda. Discussion indicated it was premature to discuss this in detail yet. Further, it would be up to the Commission to decide whether to establish such a fund.

The Committee noted that the Secretariat had, as requested, prepared a report on funding considerations, *inter alia* the implementation of Resolutions 1998-6 on Funding of Work on Environmental Concerns and 1995-5 on the Funding of High Priority Scientific Research. This report was available to the Conservation Committee as well as to the Commission (IWC/56/12).

4. CONSIDERATION OF ITEMS TO FALL UNDER THE AUSPICES OF THE CONSERVATION COMMITTEE

The Committee recognised the value of establishing a list of items to address as part of the 'extensive conservation agenda' mentioned in its founding Resolution. The following were proposed as initial items of common interest:

- endangered species and populations;
- human impacts (e.g. noise, vessel strike, bycatch, entanglements, strandings);
- habitat protection for cetacean conservation;
- whalewatching best practice guidelines;
- reporting systems for strandings, entanglements and bycatch; and
- legal and regulatory arrangements for cetacean conservation.

Some countries argued that the list is too general and too extensive. These countries argued that conservation issues are very important, but only for a small number of species and stocks of large whales. Many species and stocks of large whales are either quite numerous or rapidly growing, and for these, in their opinion, the items on the list above are not important for conservation.

4.1 Scientific issues

Of the conservation-related items currently addressed by the Scientific Committee (listed in IWC/56/CC4), the following were identified as most germane to the work of the Conservation Committee:

- highly endangered species and populations;
- scientific research related to development of techniques for improved assessment of status and mitigation measures to potential threats where identified;
- incidental takes of cetaceans including assessment of problems at the population level and development and evaluation of mitigation measures;
- non-consumptive utilisation of cetaceans;
- whales and their environment, with an emphasis on population level effects and interaction with interpreting abundance estimates;
- sanctuaries, in particular their value to the monitoring and recovery of depleted populations;
- scientific advice relevant to enforcement and compliance with conservation measures;
- collaboration with other organisations;
- voluntary submission of national reports on cetacean conservation (IWC/56/CC 3).

4.2 Collaboration with other organisations

The Conservation Committee is directed 'to explore how the Commission can co-ordinate its conservation agenda through greater collaboration with a wider range of other organisations and conventions.' Paper IWC/56/CC 2 described the major existing points of cooperation between the Commission and other organisations and conventions, which include reciprocal observer arrangements on scientific committees. The Committee could centralise collaboration, maintain an overview of those who serve as ambassadors for the IWC, and identify opportunities for new and improved collaborations.

Under this item, the Committee agreed to invite Marco Barbieri of the Secretariat to the Convention on Migratory Species (CMS), to which many IWC members belong, to address this issue. Mr Barbieri reported that CMS has been following with interest the development of the new Committee and looks forward to continuing to work closely with the IWC. A CMS-IWC Memorandum of Cooperation is in place.

5. DEVELOPMENT OF A CONSERVATION AGENDA

The Committee viewed its discussion of terms of reference, relationships with other bodies, and items to fall under its auspices as the first steps towards the development of a conservation agenda.

Brazil and Argentina proposed, through paper IWC/56/CC3, to seek voluntary reports from Contracting Governments on national actions on cetacean conservation, to provide information to subsidise a conservation agenda, in the terms of non-whaling cetacean management. In response to concerns that this might need further work, the Committee agreed to include this topic in those items under 4.1 above. Some delegations considered it premature to enter into substantive discussions, until a conclusion has been reached regarding the nature of the Conservation Committee. Other delegations disagreed with this and felt it was appropriate to start substantive discussions at this time.

6. ADOPTION OF THE REPORT

The Committee adopted the report at 09:25 on Saturday 17 July 2004.

Appendix 1**LIST OF PARTICIPANTS****Argentina**

Raul Comelli
Eduardo Iglesias
Miguel Iniguez

Australia

Nicola Beynon
Pam Eiser
Connell O'Connell
Stephen Powell

Austria

Andrea Nouak
Michael Stachowitsch

Belgium

Alexandre de Lichtervelde
Koen Van Waerebeek

Brazil

Regis Pinto de Lima
Marcia Engel
Jose Truda Palazzo Jr.

Chile

Francisco Devia Aldunate

Denmark

Ole Heinrich
Amalie Jessen
Kim Mathiasen
Maj Friis Munk
Ole Samsing
Leif Fontaine

Finland

Esko Jaakkola

France

Vincent Ridoux

Germany

Peter Bradhering
Wolfgang Dinter

Karl-Herman Kock
Marlies Reimann

Iceland

Stefan Asmundsson
Ragnar Baldursson
Asta Einarsdottir
Gisli Vikingsson

Ireland

Christopher O'Grady

Italy

Giuseppe Notarbartolo di Sciara

Republic of Korea

Chang Myeng Byen
Zang Geun Kim
Oh Seung Kwon
Sung Kwon Soh

Mexico

Exequiel Ezcurra Real de Azua
Lorenzo Rojas Bracho

Monaco

Frederic Briand

Netherlands

Henk Eggink
Giuseppe Rapphorst
Anne-Marie van-der Heijden

New Zealand

Chris Anderson
Mike Donoghue
Nigel Fyfe
Al Gillespie
Geoffrey Palmer

Norway

Halvard Johansen
Lars Walløe

Russian Federation

Rudolf Borodin
Valentin Ilyashenko

South Africa

Horst Kleinschmidt
Herman Oosthuizen

Spain

Carmen Asencio
Santiago Lens

Sweden

Bo Fernholm

Switzerland

Tom Althaus

UK

Richard Cowan
Geoff Jasinski
Laurence Kell
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USA

Nancy Azzam
Robert Brownell
Carole Carlson
Roger Eckert
Thomas Napageak
Gary Rankel
Jean Pierre Plé
Nathan Pamplin
Rollie Schmitt
Brad Smith
Michael Tillman
Chris Yates

Secretariat

Nicky Grandy
Greg Donovan

Appendix 2**AGENDA**

1. Introductory items
 - 1.1 Convener's opening remarks
 - 1.2 Election of Chair
 - 1.3 Appointment of rapporteurs
 - 1.4 Review of documents
2. Adoption of the Agenda
3. Development of terms of reference and working methods
 - 3.1 Relationship between the Conservation Committee and other bodies within the Commission
 - 3.2 Proposed terms of reference
 - 3.3 Proposed working methods
 - 3.4 Funding considerations
4. Consideration of items to fall under the auspices of the Conservation Committee
 - 4.1 Scientific issues
 - 4.2 Collaboration with other organisations
5. Development of a conservation agenda
6. Other matters
7. Adoption of the report

Appendix 3

REPORT OF THE SMALL GROUP ON THE CONSERVATION COMMITTEE

Participants: Australia, Iceland, Mexico, Netherlands (chair and rapporteur), New Zealand, Republic of Korea, South Africa

Purpose of meeting

On request of the CC meeting of 14 July 2004, to collect views with respect to the expectations of the work of the Conservation Committee (CC) and to report back to the CC.

The chair identified the following subjects for discussion:

- concepts of conservation;
- ways to move forward after Resolution 2003/1;
- terms of reference of the CC; and
- possible way forward after reporting back to the CC.

Context in which we collected views

The group agreed to exchange views and opinions in an open manner, meaning no negotiation, respecting each other feelings, accepting all views expressed by the members of the informal group and defining the most broad range of options. It was discussed and accepted that existing different views with regard to whaling should be respected in trying to define common ground and possible ways to move forward.

1. Concepts of conservation

DISCUSSION

Everybody agreed with the importance of addressing conservation in the IWC.

It was further noted that the purpose of conservation can be looked at from different angles. One view is that conservation, unlike preservation, does not exclude sustainable use; another view is that conservation does not necessarily imply sustainable use but serves all kinds of purposes. A third view is that it explicitly includes sustainable use.

COLLECTED OPTIONS

- (a) Define a specific IWC definition of conservation.
- (b) Define conservation in relation to its different purposes: both preservation as well as sustainable use.
- (c) Everyone can have its own interpretation of conservation without a fixed definition
- (d) No definition of conservation, but make explicit reference that it includes sustainable use.
- (e) No definition of conservation, but make explicit reference that it includes sustainable use, specifying it by mentioning whaling, whale watching etc.
- (f) No definition of conservation, but simply define a group of agenda-ideas which the committee could

look at, e.g. starting with non-controversial issues like the most endangered species.

- (g) A definition of conservation that is limited in specifying that conservation serves the purposes of the convention.

It was recognised that different combinations of above mentioned concepts could be made.

2. Ways to move forward with Resolution 2003/1

DISCUSSION

Everyone recognised that Resolution 2003/1 is a legal fact. It was further recognised that it is necessary to move beyond the existing status quo and to look at building bridges.

COLLECTED OPTIONS

- (a) Accepting the status quo by which the CC moves forward under the present conditions
- (b) Drafting of a resolution with an instruction for work of the CC without reference to Resolution 2003/1
- (c) Drafting of a resolution in which it's clear that the work of the CC has no link with 2003/1
- (d) Drafting of a resolution with an instruction for work of the CC and which replaces 2003/1
- (e) Drafting of a resolution with an instruction for work of the CC which refers to all previous resolutions (instead of only to the ones in Annex I of 2003/1) and which recognizes that conservation serves the purposes of the Convention
- (f) Drafting of a resolution which reconfirms the Conservation Committee and includes reference to a work plan.

Above mentioned options can be combined with the different options regarding the concept of conservation.

3. Terms of reference

DISCUSSION

Defining a ToR at this stage does not serve the purpose of the open discussion started on the functioning of the CC.

It was concluded that further drafting work on a ToR should proceed in an open process under auspices of the IWC or its Chair.

4. Possible way forward after reporting to the CC

DISCUSSION AND CONCLUSION

It was agreed that further discussions on the expectations of the work of the CC should be continued under the responsibility of the IWC or its Chair to ensure that all views will be taken in account in the further discussions.

Appendix 4

A PROPOSAL FOR VOLUNTARY NATIONAL REPORTS ON CETACEAN CONSERVATION

Submitted by Brazil

Introduction

The establishment of a Conservation Committee of the International Whaling Commission has opened new possibilities for the IWC to promote international cooperation and provide adequate advice for interested national governments on issues related to cetacean management and conservation.

To better assess the progress currently been made by national governments, identify cooperation opportunities and help develop the Conservation Agenda, it would be very useful to gather and analyse information provided by the governments themselves on the status of cetacean conservation and management initiatives they may wish to forward to the IWC. A parallel can be drawn with the National Progress Reports on Cetacean Research, which since their introduction in 1973 have been very useful as a Scientific Committee tool. In order to fulfil its mandate effectively, the Conservation Committee will likewise depend on the submission of information by Contracting Governments on progress with cetacean conservation.

Paragraph 31 of the Schedule already obliges Contracting Governments to transmit to the Commission copies of all their official laws and regulations relating to whales and whaling, and changes in such laws and regulations. Although this requirement is not limited to whaling-related measures, in practice not all members have transmitted their non-whaling laws and regulations affecting cetacean conservation, and these could be covered under a national cetacean conservation report. Issues such as the establishment of cetacean-related marine or freshwater protected areas, and particular management activities that could be of interest to other States facing similar challenges or willing to cooperate through either bilateral or international exchanges.

Even landlocked States, and other States with limited cetacean fauna, can and do contribute to cetacean conservation, for example through assistance with capacity building in cetacean conservation, especially in cooperation with developing States, as well as through active participation in biodiversity-related conventions other than the IWC.

National Cetacean Conservation Reports would be submitted annually for consideration by the Conservation Committee, and could subsidize its operational agenda as priority items of interest for member States are identified.

Brazil is mindful of the differing views and concerns regarding the initial operation of the Conservation Committee, and having taken these into account, would like to propose that the National Cetacean Conservation Reports be requested on a voluntary basis.

Proposal

We propose that a request be adopted by the Commission for the annual submission, on a voluntary basis, of National Cetacean Conservation Reports by Contracting

Governments from 2005 onwards, to be considered by the Conservation Committee, and added to the IWC website.

These Reports should follow the format proposed in Appendix I and contain information on:

- laws, regulations and other measures affecting the conservation of cetaceans;
- planning, design and designation/establishment of marine or freshwater protected areas of particular interest to cetacean conservation;
- information on whalewatching operations, its scale, target species and pertinent management issues;
- particular governmental programmes to enhance the conservation of endangered species and populations;
- data pertinent to the nature and scale of threats to cetacean conservation in their waters, and measures taken to address such threats, including, where appropriate, a summary of cooperation needs;
- systems in place for reporting of cetaceans injuries and mortality including stranding networks, incidental catch and collisions reporting frameworks;
- national activities pertaining to regional and bilateral agreements with other States relating to cetacean conservation;
- assistance to other States, especially to developing states, in the field of cetacean conservation, listing where appropriate future assistance opportunities that may become available; and
- any other information that the Conservation Committee may from time to time specify for inclusion.

The first such report should be submitted by interested parties to the Conservation Committee prior to the 57th Annual Meeting, and contain a comprehensive summary of existing laws, regulations and other measures in effect relevant to the conservation of cetaceans, and of the cetacean conservation work of the last few years. Subsequent annual reports need only contain new information.

Groups of Contracting Governments which have participated in cetacean conservation-related activities under the purview of regional organisations or agreements (such as CMS agreements) should seek to invite the organisation to submit a Cetacean Conservation Report documenting the relevant measures taken by that organisation.

The international organisations listed in Resolution 2003-1 (CMS, CCAMLR, IMO, IUCN, UNEP) should also be invited to submit regular information to the Conservation Committee on cetacean conservation issues and actions related to their field of work, preferably along the lines of the topics submitted to National Cetacean Conservation Reports.

Adjunct 1**Proposed Template for National Cetacean Conservation Reports**

Country:

National Governmental Authority Submitting the Report (full contact information)

1. Legal developments (laws, regulations and other regulatory measures related to cetaceans)
2. Information on Whalewatching Operations (scale, target species/populations and relevant management issues)
3. Current Government Programs Related to Cetacean Conservation
4. Current Threats to Cetacean Conservation and Management Measures Taken/Proposed
5. Reporting Systems for Cetacean Injuries/Mortality/Strandings
6. International Cooperation Activities (includes bilateral or multilateral cooperation, assistance and funding programs and appropriate contact information, and other international activities of the country submitting the report)
7. Other (at the discretion of the Authority submitting the Report)