

# Chair's Report of the 55th Annual Meeting

## 1. INTRODUCTORY ITEMS

### 1.1 Date and place

The 55<sup>th</sup> Annual Meeting of the International Whaling Commission (IWC) took place from 16-19 June 2003 at the Estrel Hotel and Convention Centre, Berlin. It was chaired by Prof. Bo Fernholm (Sweden). A list of delegates and observers attending the meeting is provided in Annex A.

The associated meetings of the Scientific Committee and Commission sub-groups were held at the same venue in the period 24 May – 13 June.

### 1.2 Welcome address

Renate Künast, Federal Minister of Consumer Protection, Food and Agriculture welcomed all participants to the meeting on behalf of the Government of Germany. She began by noting that over time and due to a growing awareness of environmental degradation and pollution, the German people's perception of nature had changed from viewing it as a threat to be overcome to recognising it as a scarce and valued resource worthy of preservation. Recognising the responsibility Germany has, as an ex-whaling nation, for the concerns of IWC, she noted that it is now keenly aware of the need for whale protection and is strongly committed to whale conservation. She called for the conservation aspect of the Commission's work to be strengthened, indicating Germany's view that the Commission should be responsible for the protection of small cetaceans as well as large whales. She also asked the meeting to reflect on the nature of the sustainable utilisation of marine mammals, suggesting that the 21st Century could open new and modern possibilities, i.e. whale utilisation not by catches but by whalewatching. Recognising however that rules governing whalewatching must also be in place, she believed that this new industry should be placed under the regulatory powers of IWC, thus updating the Commission's tasks while strengthening the Commission itself. Finally, she wished the meeting every success and hoped that participants would have a pleasant stay in Berlin.

### 1.3 Opening statements

The Chair reminded the meeting that the Commission's practice is to accept opening statements from Commissioners and observers in writing and that only new Contracting Governments would be invited to make short opening statements. Noting that Nicaragua had adhered to the Convention on 5 June 2003, the Chair invited Nicaragua to address the meeting.

Nicaragua recognised the good work that the IWC (particularly its Scientific Committee) has done, in developing advanced conservation and management systems that have set the model for other resource management organisations. Noting that the management of whales is inter-related with, and important to, management of fisheries, Nicaragua considered it vital that developing nations dependent upon fishery resources participate in the work of the IWC. However, it considered that in recent years, obstacles have been put in the way of progress by those who, for political reasons, wish to prevent the sustainable use of whale resources. It believed that attention had been diverted away from the management of

whales towards issues better carried out by others. For example, Nicaragua believed that (1) small cetaceans, primarily resident in waters under national jurisdiction, should be managed under the authority of national governments or a regional organisation entrusted with marine conservation; and (2) trade in whale products is the function of CITES. Nicaragua noted that it must live by the prudent use of its resources on land and in the seas. It was therefore opposed to those who would curtail sustainable use for their own ideological purposes and would work hard to help get IWC back on track.

Belize adhered to the Convention during the meeting (i.e. on 17 June 2003). In its opening statement, Belize indicated that in the same spirit as it joined IWC in 1982 to support the moratorium, it was now rejoining committed to conservation and the principles of sustainable use.

During the meeting, a number of Contracting Governments drew attention to problems with opening statements from certain NGOs. The opening statement of IWMC was withdrawn as it violated Rule of Procedure Q.3 with respect to the fact that such statements 'shall be in the form of views and comments made to the Commission in general rather than directed to any individual or group of Contracting Governments'. Following a private meeting of Commissioners to discuss a number of NGO opening statements and publications, the Chair issued a statement on behalf of the Commission. He noted that the Commission had been severely distressed by a number of the written statements made by NGOs and in particular by the content of two ECO publications released during the meeting. It was the Commission's view that these publications contained language that was extremely offensive, impugning the sovereignty of a number of Contracting Governments and containing significant factual inaccuracies. The Commission called on ECO to print a formal apology to be distributed during the meeting, and directed that ECO publications could no longer be circulated within the confines of the meeting halls and associated areas for the remainder of the meeting. The Commission unequivocally condemned the statements and considered that they constituted an abuse of the privileges accorded to the accredited observers. Finally, the Commission called on those organisations listed as sponsors of ECO to dissociate themselves formally from the offending statements, failing which their accredited status as observers might be called into question.

### 1.4 Credentials and voting rights

The Secretary reported that, with the exception of one Contracting Government for which only fax notification had been received, all credentials were in order. She noted however, that the credentials committee (that had been established by the Chair the previous day and comprising Australia, Japan and the Secretary) were prepared to accept this fax notification on the understanding that a hard copy would arrive by midday.

The Secretary also reported that voting rights were suspended for Costa Rica, Gabon, Kenya, Morocco and Senegal and that when voting commenced, she would call on the USA first. Morocco's voting rights were later restored.

New Zealand, Mexico and Italy made brief statements regarding their positions with respect to the adherence of Iceland to the Convention with a reservation to Schedule paragraph 10(e) concerning the commercial whaling moratorium. These Contracting Governments consider that Iceland's reservation is incompatible with the object and purpose of the Convention. Italy and Mexico stated that they do not recognise Iceland as a Party to the Convention or as a member of IWC, nor its right to vote. They called on Iceland to withdraw its reservation. New Zealand does not accept the Convention as being in force between itself and Iceland. Mexico considered that the procedure followed at the 5th Special Meeting of the Commission in October 2002 to decide on the issue of Iceland's accession to the Convention was improper because it allowed Iceland (which it considered to be an observer) to vote. Iceland noted that it had already received Diplomatic Notes from these three countries (and others) and considered the statements made at the meeting to not be relevant.

### 1.5 Meeting arrangements

The Chair asked Contracting Governments to: (1) keep Resolutions to a minimum and to consult widely in their preparation; and (2) be brief and to the point in their interventions, and to associate themselves, where possible, with earlier speakers who had similar views. The Secretary drew attention to the arrangements for the submission of Resolutions and other documents.

## 2. ADOPTION OF THE AGENDA

The Chair drew attention to the provisional annotated agenda and to his proposed order of business. Noting that he was aware of differing views among Contracting Governments as to whether some of the items should be on the agenda, he proposed that, as in previous years, these differences be noted and the agenda adopted with all items retained.

While this proposal was supported by some governments, others could not agree. Japan considered that many of the agenda items were contrary to the objectives and purpose of the IWC and that some were outside the terms of reference of the Convention. It proposed deletion of the items on whalewatching, whale killing methods and associated welfare issues, small cetaceans, proposals to establish new sanctuaries in the South Pacific and South Atlantic and the new item (Item 4) on strengthening the conservation agenda of the Commission. Japan believed that there were procedural problems in relation to proposals to be discussed under Item 4 since the required 60-day notice for changes to Rules of Procedure had not been met. Japan's views were supported by Norway, Antigua and Barbuda, Iceland, Dominica, Republic of Guinea, St Lucia and Benin. Several of these countries commented that no new items should be added to the Commission's agenda until completion of the Revised Management Scheme (RMS) that they considered as having top priority, and that the introduction of Item 4 had the potential to further divide and polarise the Commission.

The USA, Monaco, Italy, South Africa, Germany, New Zealand, Sweden, Spain, Brazil, San Marino, the Netherlands, Australia, Denmark and the UK disagreed with Japan and others, noting that the agenda items

mentioned by Japan were within the remit of the Convention and had significant support within the Commission. South Africa, supported by Brazil, mentioned the importance that these items, particularly whalewatching, have in bringing developing countries to IWC. Several countries did not believe that there were procedural problems regarding Item 4, but that in any case, such comments were entering into matters of substance on the item itself rather than whether or not it should be included on the agenda.

Referring to Rule of Debate D.4, Australia moved that the debate on adoption of the agenda be closed. In accordance with this Rule, the Chair allowed two Commissioners to speak against the motion before proceeding to a vote. Antigua and Barbuda hoped that a compromise on the agenda could be reached and believed that more time was needed in order to reach this. Norway considered that the procedural issue regarding Item 4 had not been decided. The meeting was adjourned for lunch. On returning, Australia's motion to close the debate was put to a vote and was carried by 26 votes to 19. The Chair then ruled that the Provisional Annotated Agenda be adopted without change. Japan challenged this ruling. Japan's appeal was put to a vote but the Chair's ruling was upheld (there being 19 votes in support of the appeal and 27 against). The adopted agenda is given in Annex B.

## 3. SECRET BALLOTS

### 3.1 Proposal for amendment to Rule of Procedure E.3(d)

Japan again introduced its proposed amendment (that was unsuccessful at the 2001 and 2002 Annual Meetings<sup>1</sup>) to broaden the application of secret ballots, i.e.

Votes can be taken by show of hands, or by roll call, as in the opinion of the Chairman appears to be most suitable, or by secret ballot if requested by a Commissioner and seconded by at least five other Commissioners except that on any matter related to aboriginal subsistence whaling, voting by secret ballot shall only be used when all the Commissioners representing the Contracting Parties where the aboriginal subsistence take or takes will occur requests the use of a secret ballot and where such requests are seconded by at least five other Commissioners.

Japan considered that in addition to being available for electing the Chair and Vice-Chair of the Commission, appointing the Secretary of the Commission and selecting Annual Meeting venues, voting by secret ballot should be possible for setting catch limits and deciding other regulatory measures. It again noted that the secret ballot is a system commonly used in other international organisations including fisheries management bodies, and that its broader application within IWC would help implement Resolution 2001-1<sup>2</sup> that, *inter alia* 'endorses and affirms the complete independence of sovereign countries to decide their own policies and freely participate in the IWC (and other international forums) without undue interference or coercion from other sovereign countries'. Japan urged Contracting Governments to act consistently with other international organisations.

### 3.2 Commission discussions and action arising

The Republic of Guinea, Iceland, Norway, St. Lucia and the Solomon Islands spoke in support of the proposal.

<sup>1</sup> *Ann. Rep. int. Whaling Comm. 2001:8 and 2002:8*

<sup>2</sup> *Ann. Rep. int. Whaling Comm. 2001:54*

Iceland considered that it should be a general principle of democratic elections that votes are secret so that outside pressures cannot be applied. As last year, Norway believed that transparency should be employed wherever possible but could support Japan's proposal given the real threats of coercion and intimidation surrounding the whaling debate. St. Lucia and the Solomon Islands made similar remarks.

Speaking against the proposal, Monaco noted that all countries are subject to pressure, but that it is important that civil societies know how their representatives vote. New Zealand agreed with Monaco and considered that a move to secret ballots would be a big step backwards in the democratisation of international affairs. The Netherlands also supported transparency in voting procedures.

On being put to a vote, the proposal failed to achieve a majority and was therefore not adopted. There were 19 votes in support of the proposal, 26 against and 1 abstention.

#### 4. STRENGTHENING THE CONSERVATION AGENDA OF THE COMMISSION

##### 4.1 Proposal to strengthen the conservation agenda of the Commission

Mexico introduced a draft Resolution 'The Berlin Initiative on strengthening the conservation agenda of the International Whaling Commission' on behalf of all co-sponsors (Australia, Austria, Brazil, Finland, France, Germany, Ireland, Italy, Kenya, Mexico, Monaco, the Netherlands, New Zealand, Portugal, San Marino, South Africa, Spain, Sweden, the UK and the USA). The draft Resolution proposed that the Commission:

- (1) welcomes initiatives to assess the achievements and orientation of the cumulative work of the Commission in the pursuit of its conservation objective;
- (2) endorses the proposals made by various Contracting Governments to organize, on the basis of that assessment, the future Conservation Agenda of the Commission and to cooperate in its preparation;
- (3) decides to establish a Conservation Committee of the Commission, composed of all Contracting Parties, in conformity with Article III paragraph 4 of the Convention, and to amend paragraph M.1 of the Commission's Rules of Procedure accordingly, together with all the resulting budgetary implications.
- (4) decides to entrust the Conservation Committee with: (1) the preparation and recommendation to the Commission of its future Conservation Agenda, taking full account of this Resolution; (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.
- (5) instructs the Conservation Committee to meet before the Commission's Annual Meeting in 2004, in order to organize its work, so that the Conservation Agenda can be considered for adoption by the Commission at that Annual Meeting.
- (6) directs the Conservation Committee to explore how the Commission can coordinate its conservation agenda

through greater collaboration with a wider range of other organizations and conventions including *inter alia* CMS, CCAMLR, IMO, IUCN, and UNEP.

- (7) requests the Scientific Committee to advise the Conservation Committee in the performance of the tasks entrusted to it in this Resolution, and to ensure that the appropriate scientific research items, including *inter alia*, whalewatching, environmental issues and behavioural research, under the responsibility of the Scientific Committee, are incorporated in the Conservation Agenda.
- (8) requests the Conservation Committee to begin exploring the possible establishment, by the Commission, of an appropriate trust fund (including the identification of potential contributors), to make available the necessary financial resources to the Commission and, particularly, to the Contracting Governments committed to implementing specific items of the Conservation Agenda related to conservation-oriented research. To that end, the Committee shall give priority to the question of securing assistance for scientific research and capacity building for scientists and institutions from developing countries, and shall take advantage from the experiences obtained in other international environmental and conservation conventions and treaties, in the establishment of similarly-oriented international funds.
- (9) directs the Secretariat to prepare a report, to be considered by the Commission at its next annual meeting, on the implementation of Resolution 1998-6 regarding the establishment of a dedicated 'Environment Research Fund' to facilitate research on environmental change and cetaceans, as well as on the results of the appeal it made in its Resolution 1999-5 'to the Contracting Governments, other governments, international organizations and other bodies to contribute financially and in kind' to research programs, and to include in that report a recommendation to the Commission, as to how that Fund could best be considered in the light of the possible establishment of the trust fund referred to in the previous paragraph.

In explaining the rationale behind the proposed Resolution, Mexico believed that a series of new developments concerning IWC-related issues that have emerged since the Convention was agreed in 1946 (e.g. UNCLOS, regional management agreements, the establishment of sanctuaries and the moratorium on commercial whaling) indicate that there is a conservation agenda to be discussed and examined within IWC. It stressed that the Resolution was being proposed simply to provide the institutional structure needed to take account of conservation issues within IWC and not as stated by Japan prior to the meeting to, *inter alia*, attempt to change the fundamental purpose of the whaling treaty by introducing a strategy to end all sustainable use of whale resources for food. Mexico noted that the draft Resolution does not attempt to change the Convention nor any of the mandates, rules or decisions of other bodies within the Commission, and neither does it seek to override the Scientific Committee. It also noted that the proposed Conservation

Committee might not have been needed if the Commission agreed on its competency to deal with matters such as whalewatching and habitat protection. Mexico believed that only a proactive, dynamic and solid conservation agenda would lead to a realisation of all the objectives and purposes of the Convention. The co-sponsors, who did not believe that the only purpose of the Convention is to regulate whaling, considered the Berlin Initiative to be a bone fide attempt to help the Commission escape its current stagnation so that rather than one side prevailing over the other, the Convention would prevail over the division of its Parties. Finally, it noted that the proposed Conservation Committee would be on a par and equal with the Scientific and Finance and Administration Committees and should not have major implications for either cost or responsibilities of the Commission.

#### 4.2 Commission discussions and action arising

A number of co-sponsors reinforced Mexico's introduction and spoke in support of the draft Resolution. Australia considered that the draft Resolution represented a milestone in the evolution of the IWC that would help the Commission clarify, develop and meet the conservation objective of the Convention. It believed that the Conservation Committee should fully involve all Contracting Governments, that it should be supported by and promote good science and have an ambitious agenda. Australia indicated that with this initiative, it would redouble its efforts within IWC. Germany believed that in view of the variety of threats to cetaceans from, for example, pollution, climate change, noise, bycatch in fisheries, shipping and off-shore activities, many conservation measures were needed and that the Resolution would provide a sound basis for future conservation efforts. It stressed that the proposed Resolution is not against sustainable use and is not linked to the moratorium or the RMS. As such, Germany could not understand some countries opposition to the proposal.

New Zealand considered that the Berlin Initiative would provide the framework for meeting the obligation in the preamble to the Convention, i.e. of 'recognising the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks'. It also considered that the initiative would help synthesise and prioritise issues and assist in future planning and would enable the Commission to respond more efficiently than at present. Italy believed that the Resolution would restore the balance between sustainable use and conservation and improve co-operation within the IWC. Noting the concern regarding cetaceans in the Mediterranean, Italy urged those countries that had ratified the ACCOBAMS treaty to support the Berlin Initiative.

For Sweden, a continued balance between the objectives of the Convention is essential, underlining the link with ongoing broader discussions on sustainable development within the Rio/Johannesburg process. As others, it noted that conservation issues are not just linked to questions of sustainable use, since various forms of environmental degradation and fisheries practices are threatening the world's whale populations. Sweden hoped that the new Committee would be able to strengthen actions in response to such threats. It supported completion of the RMS and believed that the Conservation Committee would ultimately be seen as a support structure for an efficient RMS. Sweden regretted that there had not been sufficient time for

wider consultation on the draft Resolution but hoped that there would be continued contacts between different Parties so as to build on it and make the Conservation Committee an important element in realising all the objectives of the Convention. Switzerland noted that the Scientific Committee and Commission has been dealing with conservation issues (e.g. quotas, sanctuaries, giving management advice, RMP) and like Sweden supported completion of the RMS. It also supported the draft Resolution but requested clarification on how the Conservation Committee will be composed and how it will relate to the Scientific Committee. Monaco pleaded for consistency in countries' attitudes to conservation. It did not see the sense of Contracting Governments voting for conservation in other fora and against it at IWC and believed that there is a need to reflect and integrate this new body of knowledge within the work of the Commission.

In supporting the draft Resolution, the USA considered that it did not undermine its commitment to the management principle within the IWC nor did it consider the proposal to be an anti-whaling initiative. The USA supported the draft Resolution because it believed it to be good governance. Finland reported that since 1983, whale conservation had been its main objective under the Convention, but noted that it had never said that there could not be controlled sustainable commercial whaling once an acceptable management system is in place. It referred to the Convention on Biodiversity in which, like the ICRW, conservation and sustainable use are the two basic principles. Finland associated itself with earlier remarks regarding the purpose of the draft Resolution and regretted that it had not been possible to broaden the support even though efforts had been made to do so.

Although Brazil noted that it fully embraces the concept of sustainable use of natural resources, it stressed that direct harvest is not the only option for sustainable use. Accordingly, it believed that conservation of whale resources is not limited to setting catch quotas but must also include adequate action to address other threats to ensure the long-term survival of these species. It considered that to vote against the draft Resolution would be to deny the conservation principle. South Africa considered that the proposals in the draft Resolution worked in favour of developing countries that could benefit from whalewatching and tourism. Ireland expressed some sympathy with the comments of some of those opposing the draft Resolution. Like them, it believed that completion of the RMS is important and noted that it had worked hard towards this goal, including the tabling of the 'Irish Proposal' some six years ago<sup>3</sup>. However, it considered the development of the RMS to be in a state of paralysis and therefore supported the draft Resolution since it felt it would help drive the work of the Commission forward. It did not doubt that Japan, Norway and others believed conservation to be important. Spain and Portugal also spoke in support of the draft Resolution and associated themselves with the remarks of other co-sponsors.

Denmark expressed a number of concerns over the draft Resolution relating to procedure, substance and timing. With respect to procedure, Denmark believed that the third operative paragraph violated an earlier decision by the Commission that Resolutions cannot be used to amend

<sup>3</sup> *Rep. int. Whaling Comm.* 49:35

either the Schedule or the Rules of Procedure. It therefore questioned the legality of the draft Resolution. With respect to substance, Denmark considered the introductory text to have a number of notable omissions. The draft Resolution did not refer to the role of the Commission in managing whaling, it did not mention the Revised Management Procedure and it had omitted NAMMCO from the list of regional and international organisations/agreements that have been established since the ICRW and that may affect great whales. Referring to the operative paragraphs, it considered that creation of a Conservation Committee would detract resources from other activities and it expressed unease that the ninth paragraph might give NGOs undue influence in setting Commission priorities. Denmark believed that this is a responsibility for Contracting Governments alone. It also took issue with certain parts of Annex II of the draft Resolution, particularly regarding language used in relation to whaling under Special Permit – a right clearly enshrined in the Convention. With respect to timing, Denmark believed that in view of the existence of the temporary moratorium on commercial whaling and other area restrictions (Schedule paragraph 8) and two comprehensive whale sanctuaries, there is no urgency for other measures. It did not wish to exclude the possibility of developing a set of guidelines on how the IWC might wish to deal with conservation, which might be a good idea. However, it considered the current priority is to agree an RMS, although if the two things could be done at the same time in good faith, then it believed the IWC would be back on its dual track of conservation and management.

Iceland noted that it supports whale conservation and believed that all whaling must be sustainable. However, it considered that the draft Resolution was hi-jacking the terms of the Convention by selective quotation from its preamble, would draw attention away from work on the RMS and increase polarisation in the IWC. Noting Mexico's remark that the Berlin Initiative would help the Commission escape stagnation, Iceland therefore considered that at the very least, the proposers should be willing to postpone a decision on this issue while the Commission tries to find a more widely agreeable avenue for a conservation agenda. Like Denmark, it had concerns with the legality of the 3rd operative paragraph, noting that it contravened Rule of Procedure R.1 that requires 60-days notice of amendments to the Rules of Procedure.

Norway, the Republic of Korea, Antigua and Barbuda, China, Dominica, the Russian Federation, Japan, Grenada, St. Lucia and Morocco made similar remarks. While agreeing that the Commission has a conservation agenda, Norway expressed the view that this agenda has been exercised consistently at the expense of the main purpose of the Convention (i.e. the orderly development of the whaling industry) and that the Berlin Initiative would further aggravate this imbalance and create a radical and lasting change in the character of the IWC. Norway considered that the only proper way of making such a change would be to call a diplomatic conference to renegotiate the Convention. Realising that this is not feasible, it believed that those Contracting Governments unhappy with the Convention were choosing to circumvent it via the 'Berlin Initiative'. Antigua and Barbuda noted that the sponsors of the draft Resolution had not consulted with those countries supporting sustainable whaling. China recalled a significant conservation measure was taken by

the Commission in 1982 when it agreed the commercial whaling moratorium and therefore did not see the need for a Conservation Committee. It noted that like other developing countries, it already has difficulties in attending the whole Annual Meeting series, and expressed concern that the Conservation Committee, if established, may not attract wide enough participation. Dominica reported that it had been put under unacceptable pressure to support the draft Resolution by certain NGOs. The Russian Federation noted that it gave high priority to the conservation of whale stocks in the context of sustainable use. It agreed with Denmark that there might be room for compromise and suggested that whale conservation could be given high priority under the framework of the Convention on Biodiversity (CBD). Like others, Japan believed the draft Resolution to be contrary to the primary objective of the Convention. It expressed concern regarding the possible establishment of a trust fund, believing that instead, effort should be made to broaden participation in IWC through reducing the financial burden of membership by developing countries. Noting that about half of the Commission appeared strongly opposed to the draft Resolution, Japan questioned how any Conservation Committee could function properly under such conditions. Grenada asked: (1) how the so-called conservation agenda differs from the regulatory and conservation objectives of the RMP, the RMS, the moratorium, sanctuaries and other management tools; and (2) what was the real purpose of the proposal and how did the proposers interpret the meaning of conservation. St. Lucia believed that the proposal would undermine progress on the RMS and the work of the Scientific Committee. It believed that the Scientific Committee's work should expand to allow the conservation agenda to be investigated and achieved and that funds should be used to advance the work of the Scientific Committee.

Although it was not necessarily against the Committee, Morocco did not consider it necessary since conservation issues can be addressed within the existing structure of the Commission and its sub-groups. It considered it preferable to improve the functioning of the existing structure rather than establishing a new group that would face the same problems. While it recognised the significant effort made in developing the draft Resolution, it believed further discussion was necessary and that without consensus the Conservation Committee would not work.

In responding to a number of points made, Mexico acknowledged that amendments to the Rules of Procedure could not be made until the draft Resolution is adopted. It agreed that if the Commission did decide to establish a Conservation Committee then the Rules of Procedure would need to be amended. It reported that the co-sponsors were willing to delete part of the 3rd operative paragraph (i.e. the part reading 'and to amend paragraph M.1 of the Commission's Rules of Procedure accordingly, together with all the resulting budgetary implications') on the understanding that it will propose appropriate Rules of Procedure prior to the next Annual Meeting and in accordance with the 60-day notice rule. Responding to Switzerland, Mexico drew attention to the third operative paragraph of the draft Resolution indicating that the Conservation Committee would be open to all Contracting Governments. It noted that it would be up to individual governments to decide whom to send to the Committee, but it hoped that there would be a combination of those with

experience in conservation issues and those with experience in the science of conservation. Mexico noted that the relationship of the Conservation Committee with the Scientific Committee was described in operative paragraph 7 and that there would be no major costs involved. The main cost would be that associated with holding a Committee meeting. With respect to the proposal of the Russian Federation, Mexico did not believe this to be an appropriate alternative since the CBD does not have competency over cetaceans, unlike the IWC, and that in addition, not all IWC members are also Parties to the CBD. Mexico again stressed that there was no hidden agenda behind the Berlin Initiative but expressed the view that to vote against the draft Resolution would be to vote against conservation.

Noting that there had been an exhaustive debate, the Chair ruled that the draft Resolution, with the third operative paragraph amended as described by Mexico, be voted upon. Norway challenged this ruling, but the ruling was upheld when put to a vote – there being 20 votes in support of the challenge and 26 against. The amended draft Resolution was therefore put to a vote. There were 25 votes in favour and 20 against, thus the Resolution was adopted (Resolution **2003-1**, Annex C). A number of countries explained their vote. Grenada, who had not participated in the vote, believed that to establish a Conservation Committee without consensus is counterproductive. Antigua and Barbuda, Norway and Japan considered that despite the amendment to the third operative paragraph, the vote was still in contravention of the Rules of Procedure. Japan considered that this outcome would further polarise the IWC and together with Antigua and Barbuda, Norway and Dominica, reserved the right not to participate in the Committee or to contribute financially. Iceland associated itself with other speakers. It also asked the proponents not to misrepresent the outcome, i.e. voting against the proposal did not mean that countries were against conservation. On the contrary, Iceland believed that all countries supported conservation, but it considered that the proposal would direct attention away from the real purpose of the Convention, i.e. conservation of whale stocks to allow sustainable use. It hoped that this would not mean the end of the RMS development process. China felt that more time should have been made available for consultations.

In drawing discussions to a close, the Chair noted that establishment of the Conservation Committee would not solve the problems within IWC and stressed the need to continue to work to find a balance between conservation and management.

## 5. WHALEWATCHING

### 5.1 Report of the Scientific Committee<sup>4</sup>

In 2000, the Committee had identified a number of areas for further research on possible long-term effects of whalewatching on whales and a number of possible data types that could be collected from whalewatching operations to assist in assessing their impact. The Committee developed this further at the 2003 meeting and

will continue to work on data collection issues in the intersessional period.

The Committee also reviewed whalewatching guidelines and regulations, and new information on dolphin feeding and 'swim-with' programmes. The Committee also welcomed the news that a whalewatching management workshop will be held in late 2003 or early 2004 in Cape Town, South Africa. It recommended that workshop participants should be geographically representative and include scientists, managers, conservation organisations, whalewatching operators and representatives from other disciplines, such as economics and social sciences. The Committee established an intersessional correspondence group to provide scientific advice for the organisation of the workshop.

### 5.2 Commission discussions and action arising

The Chair and a number of countries welcomed Doug DeMaster as the new Chair of the Scientific Committee and thanked him for his report.

The UK, New Zealand, Germany, Brazil, Italy, South Africa, Australia and the USA all spoke of the importance of whalewatching, with a number of them regarding it as the only sustainable way to use whale resources (given appropriate regulations) and as a more economically viable activity than whaling. Its contributions of useful scientific information on whale stocks and its benefit to indigenous peoples were also noted.

The UK announced that it was pleased to contribute funds to the workshop being arranged by South Africa, and together with a number of others expressed the hope that IWC funding could be found to support the participation of representatives from the Scientific Committee.

Norway considered whalewatching to be outside the remit of the Convention.

The Commission noted the report of the Scientific Committee and endorsed its recommendations.

## 6. WHALE STOCKS<sup>5</sup>

### 6.1 Southern Hemisphere minke whales

#### 6.1.1 Report of the Scientific Committee

The Committee has carried out annual surveys in the Antarctic (south of 60°S) since the late 1970s. The last agreed estimates for each of the six management Areas for Antarctic minke whales were for the period 1982/83 to 1989/90. At the 2000 meeting, the Committee agreed that whilst these represented the best estimates for the years surveyed, they were no longer appropriate as estimates of current abundance. An initial crude analysis of available recent data had suggested that current estimates might be appreciably lower than the previous estimates<sup>6</sup>.

At the 2001 meeting<sup>7</sup>, considerable time was spent considering Antarctic minke whales with a view to obtaining final estimates of abundance and considering any trend in these. This included a review of data sources and analytical methodology. After considering many of the factors affecting abundance estimates, there is still evidence of a decline in the abundance estimates, although it is not clear how this reflects any actual change in minke

<sup>4</sup> For details of the Scientific Committee's deliberation on this Item see *J. Cetacean Res. Manage.* 6 (Suppl.)

<sup>5</sup> For details of the Scientific Committee's deliberation on this Item see *J. Cetacean Res. Manage.* 6 (Suppl.)

<sup>6</sup> *J. Cetacean Res. Manage.* 3 (Suppl.): 29-32.

<sup>7</sup> *J. Cetacean Res. Manage.* 4 (Suppl.): 30-6.

abundance. Three hypotheses that might explain these results were identified:

- (1) a real change in minke abundance;
- (2) changes in the proportion of the population present in the survey region at the time of the survey;
- (3) changes in the survey process over time that compromise the comparability of estimates across years.

A considerable amount of work to investigate this further was undertaken at the 2003 meeting and a number of high priority tasks have been identified and recommended for completion before the 2004 meeting.

Last year, it had been hoped that the full third circumpolar series of IWC/SOWER<sup>8</sup> cruises would have been completed by the 2002/2003 season. Unfortunately poor weather on the 2002/2003 cruise means that this will no longer be possible. The Committee does not anticipate being able to provide a full report on the status of Antarctic minke whales (including an agreed estimate of current abundance) until the third circumpolar has been completed – at the earliest at the 2006 meeting. It thanked Japan for once more providing the two vessels used on the SOWER cruises.

The Committee reiterated the great importance the SOWER surveys have been to its work. It recommended that sufficient time be set aside next year to adequately discuss further plans, given the completion of the third circumpolar set of surveys this year. To facilitate that discussion, an intersessional Steering Group was established.

#### *6.1.2 Commission discussions and action arising*

Australia considered that the Scientific Committee report confirmed that: (1) there is still no available abundance estimate for Southern Hemisphere minke whales, and (2) it has not yet been possible to explain the apparent decline in this population. Australia remained disturbed regarding the takes of minke whales in this area as part of Japan's JARPA programme without a reliable abundance estimate. New Zealand made similar remarks, looked forward to a revised abundance estimate and believed that in the meantime a precautionary approach should be employed. The UK, Germany, Italy and Monaco shared the concerns expressed by Australia and New Zealand.

Drawing attention to the Scientific Committee's report, Norway acknowledged that there is still no agreement on an explanation of the apparent population decline, but noted that the most appropriate time to resolve this issue is after the Committee completes its work on reviewing the IDCR/SOWER abundance estimates and trends, i.e. in two years time. It noted however, there are still large numbers of minke whales in this area, and believed that any decline, if it does exist, is not caused by Japan's catches.

The Commission noted the Scientific Committee report and endorsed its recommendations.

### **6.2 Southern Hemisphere blue whales**

#### *6.2.1 Report of the Scientific Committee*

The Committee is beginning the process of reviewing the status of Southern Hemisphere blue whales. An important part of this work is to try to develop methods to identify

pygmy blue whales from 'true' blue whales at sea and progress is being made on this. Work on genetic and acoustic differentiation techniques is continuing and there is considerable progress with morphological methods. Last year, the Committee received information that point estimates of blue whale abundance appear to show an increase between the third circumpolar series of cruises (CPIII) and the previous two, although this was not statistically significant. The Committee has agreed on a number of issues that need to be resolved before it is in a position to carry out an assessment, which it believes should commence in 2006.

#### *6.2.2 Commission discussions and action arising*

New Zealand commented that the situation with respect to blue whale populations is a tragic indicator of uncontrolled whaling, and that even after 40 years of protection, the signs of recovery are minimal. Australia agreed.

The Commission noted the Scientific Committee report and endorsed its recommendations.

### **6.3 Southern Hemisphere humpback whales**

#### *6.3.1 Report of the Scientific Committee*

Considerable progress has been made in recent years in working towards an assessment of humpback whales. Attention has focussed both on data from historic whaling operations and on newly acquired photo-identification, biopsy and sightings data. The Committee made a number of research recommendations to further progress towards an assessment. An intersessional group was established last year to review progress and determine whether it is feasible to set a deadline for the assessment to be completed. Further work was identified this year and progress will be reviewed in 2004.

#### *6.3.2 Commission discussions and action arising*

New Zealand was pleased to note the contribution of Auckland scientists to this work. It noted that while the information available on this population is highly variable with large gaps it was clear that while some stocks are recovering from past excesses, others are still in a severely depleted state. New Zealand therefore considered that the South Pacific, in particular, will require protection for years to come if stocks are to recover to previous abundance levels. Australia agreed and commented that whalewatching operations are dependent on whale populations migrating in large and reliable numbers. It encouraged the continuation of work on abundance estimates so as to ensure reliable data for whalewatching purposes.

The Commission noted the Scientific Committee report and endorsed its recommendations.

### **6.4 Other stocks - bowhead, right and gray whales**

#### *6.4.1 Report of the Scientific Committee*

##### **SMALL STOCKS OF BOWHEAD WHALES**

The Committee received information on the stock identity and movements of bowhead whales from the Davis Strait/Baffin Bay and Hudson Bay/Foxe Basin stocks. Preliminary abundance estimates for some regions of Canada were received. The catch of one animal by Canada is considered under Item 16.

##### **NORTH ATLANTIC RIGHT WHALES**

The Committee has paid particular attention to the status of the North Atlantic right whale in the western North Atlantic in recent years (e.g. see Special Issue 2 of the Journal -

<sup>8</sup> SOWER: Southern Ocean Whale and Ecosystem Research.

*Right whales: worldwide status*). The Committee is extremely concerned about this population, which, whilst probably the only potentially viable population of this species, is in serious danger (*ca* 300 animals). By any management criteria applied by the IWC in terms of either commercial whaling or aboriginal subsistence whaling, there should be no direct anthropogenic removals from this stock.

This year, the Committee once again noted that individuals are continuing to die or become seriously injured as a result of becoming entangled in fishing gear or being struck by ships. It repeated that it is a matter of absolute urgency that every effort be made to reduce anthropogenic mortality in this population to zero. This is perhaps the only way in which its chances of survival can be directly improved. There is no need to wait for further research before implementing any currently available management actions that can reduce anthropogenic mortalities.

The Committee reviewed progress on a number of research and management recommendations concerning this stock.

#### **EASTERN NORTH PACIFIC RIGHT WHALES**

The Committee believes that the situation of eastern North Pacific right whales is equal to, if not worse than, the situation in the western North Atlantic. Numbers are estimated to be of the order of tens of individuals, with only two sightings of possible juveniles or calves this century. Both the photographic and biopsy catalogues contain several individuals that were sampled in multiple years. The Committee strongly recommended that research into the status of eastern North Pacific right whales be continued and intensified; specifically that:

- (1) visual and acoustic surveys to establish the summer distribution and feeding ground be continued;
- (2) photo-identification and photogrammetry effort be combined with attempts to obtain photographs suitable for examination of evidence of entanglement and ship strikes; and
- (3) genetic sampling of individuals be continued and the use of genotypic mark-recapture methods for population estimation be investigated.

#### **SOUTHERN HEMISPHERE RIGHT WHALES**

The Committee received updated information on right whales found off Peninsula Valdes, Argentina between June and December each year. Based on 30 years of photo-identification data, the annual increase in the population was 6.8% (SE 0.5%) and the population contains some 700 reproductively active females (SE 50).

#### **WESTERN NORTH PACIFIC GRAY WHALES**

This is one of the most endangered populations of great whales in the world. It numbers less than 100 animals and there are a number of proposed oil and gas-related projects in and near its only known feeding ground. The Committee held a Workshop in October 2002 to review this further. The Workshop report will be published in *J. Cetacean Res. Manage.* 6 (Suppl.). Overall, the Workshop agreed with the conclusions of previous reviews on western gray whales. Specifically, that the population is very small, and suffers

from a low number of reproductive females, low calf survival, male-biased sex ratio, dependence upon a restricted feeding area and apparent nutritional stress (as reflected in a large number of skinny whales). Other major potential concerns include behavioural reactions to noise (notably in light of increasing industrial activity in the area) and the threat of an oil spill off Sakhalin which could cover all or part of the Piltun area and thus potentially exclude animals from this feeding ground. The Workshop had noted that assessments of the potential impact of any single threat to the survival and reproduction of western gray whales were insufficient and had strongly recommended that risk assessments consider cumulative impact of multiple threats (from both natural and anthropogenic sources).

The Committee adopted the Workshop report and endorsed its recommendations, including the research and monitoring plan. In conclusion, the Committee strongly reiterated that it is a matter of absolute urgency that every effort is made to reduce anthropogenic mortality (including direct catches) and disturbance to zero to save western North Pacific gray whales from extinction.

#### **HUMPBACK WHALES OFF GABON**

The potential impact of ongoing seismic surveys on a humpback whale breeding and calving ground in Gabon was raised. Seismic surveys were planned for May-July 2003 and coincided with humpback whale breeding and calving in the area. The Committee expressed serious concern about the spatial and temporal overlap of surveys and humpback breeding and noted that future seismic surveys should be completed prior to the arrival of whales on their wintering grounds off Gabon.

#### *6.4.2 Commission discussions and action arising*

Discussion within the Commission focussed on the western North Pacific stock of gray whales. The USA generally welcomed the Scientific Committee's report and was encouraged by the collaborative effort at the workshop in the Republic of Korea in October last year. It remained concerned, however, about the status of the stock in view of its geographic and genetic isolation combined with small population size and the possibility that there are less than 50 reproductive individuals present. The USA continued to support the Scientific Committee's recommendations that long-term research and management of this stock be continued and expanded. It also noted the recommendations that other range states such as Japan, China and the Republic of Korea develop national research and management programmes. The Netherlands complimented the Republic of Korea for organising the workshop and supported the remarks made by the USA. It noted that increasing industrial activity such as oil exploration may cause additional threats to this stock and urged that before such activities are started, environmental impact assessments are made and appropriate action taken. Noting the recommendations regarding national research and management programmes, the Republic of Korea indicated its willingness to participate actively in research programmes and reported that its national programme for next year will include the monitoring of gray whales in its waters.

The Commission noted the Scientific Committee report and endorsed its recommendations.



## 6.5 Other

### 6.5.1 Report of the Scientific Committee

#### MATTERS RELEVANT TO MORE THAN ONE STOCK

The Committee received reports on the new data that have been incorporated into the IWC-DESS sighting database, including new data from the Southern Hemisphere SOWER cruises and from the Icelandic component of the NASS 2001 surveys.

It also continued to work on the use of simulated datasets to test methods of estimating abundance.

#### IN-DEPTH ASSESSMENT OF SPERM WHALES

The Committee received and endorsed a proposal to plan for an in-depth assessment of sperm whales some time around 2007/2008, provided that certain analyses and field work are undertaken. A proposal for a workshop was endorsed but not given high priority for funding. An intersessional working group will continue to discuss this matter.

#### SOUTHERN HEMISPHERE FIN WHALES

The Committee briefly considered new information on Southern Hemisphere fin whales. A number of research recommendations were made.

#### NORTH ATLANTIC FIN WHALES

The Committee received a suggestion that a *pre-implementation assessment* of North Atlantic fin whales should become a priority activity for the Committee. There had been insufficient time during the meetings of the sub-committee on the RMP for this to be discussed. It was agreed that an intersessional Steering Group would develop a recommendation for the Committee regarding whether the available data are sufficient to allow a *pre-implementation assessment* to occur.

### 6.5.2 Commission discussions and action arising

Iceland welcomed the Committee's plans for an in-depth assessment of the North Atlantic fin whale stock since it is important to Iceland. The UK also welcomed the Committee's intentions to press forward with this work, but indicated that it would be happier if it could be assured that no further efforts would be made to exploit the stock until completion of this assessment.

The Commission noted the Scientific Committee report and endorsed its recommendations.

## 7. ABORIGINAL SUBSISTENCE WHALING<sup>9</sup>

The meeting of the Aboriginal Subsistence Whaling Sub-committee took place on 11 June chaired by Andrea Nouak (Austria). Delegates from 28 Contracting Governments participated. The full Sub-committee report is available as Annex D.

### 7.1 Aboriginal subsistence whaling procedure

#### 7.1.1 Report of the Aboriginal Subsistence Whaling Sub-committee

The Sub-committee noted that the Scientific Committee's progress on developing a strike limit algorithm (*SLA*) for gray whales was slower than expected, but that with the intersessional workshop planned for early 2004, the Committee hoped to complete its work at next year's meeting.

The Sub-committee also noted that there had been considerable discussion of the Greenland Research Programme during the Scientific Committee meeting and that the Committee had: (1) emphasised the urgent need for information on stock structure and abundance and (2) made strong recommendations on the need to: (a) collect genetic and other biological material from the catch, and if possible from neighbouring waters; (b) continue focussed telemetry studies; and (c) undertake an aerial survey this summer (2003) in West Greenland.

The Scientific Committee had also requested logistical and financial support from relevant governments and authorities.

In the Sub-committee, most of the discussion centred on the financial support mechanisms to enable the research to take place. After an exchange of views, it endorsed the recommendations of the Scientific Committee.

#### 7.1.2 Commission discussions and action arising

The Commission noted this part of the report and endorsed its recommendations.

### 7.2 Aboriginal subsistence whaling scheme (AWS)

#### 7.2.1 Report of the Aboriginal Subsistence Whaling Sub-committee

Last year, the Scientific Committee had recommended a number of scientific aspects of an eventual AWS<sup>10</sup> and it repeated these this year. During the Sub-committee meeting there was a brief discussion of a 'grace period' (i.e. a mechanism to deal with a hypothetical situation of no abundance estimate being made available within the specified time-frame) but it made no recommendations under this item.

#### 7.2.2 Commission discussions and action arising

The Commission noted this part of the report.

### 7.3 Aboriginal subsistence whaling catch limits

#### 7.3.1 Report of the Aboriginal Subsistence Whaling Sub-committee

##### 7.3.1.1 BERING-CHUKCHI-BEAUFORT SEAS STOCK OF BOWHEAD WHALES

The Scientific Committee had noted that the adoption of the *Bowhead SLA* last year has implications for the focus of its in-depth assessment of this stock in 2004. It agreed that the primary focus of the in-depth assessment should be: (a) the data required for the *Bowhead SLA*; and (b) examining whether the present situation is within the tested parameter space for that *SLA*. The latter effort will include consideration of such issues as stock identity and biological parameters. Previous assessment models can be used to investigate this, but it will not be necessary to determine the 'best' model or to calculate management-related quantities (in the time-consuming manner of previous assessments) as the *Bowhead SLA* will be used to provide management advice.

It had received a new population estimate for 2001 of around 10,000 whales and a rate of increase of 3.4% for the period 1978-2001. The Scientific Committee agreed that there was no reason to change its previous management advice.

The Sub-committee noted the Scientific Committee's report.

<sup>9</sup> For details of the Scientific Committee's deliberation on this Item see *J. Cetacean Res. Manage.* 3 (Suppl.): 29-32

<sup>10</sup> *Ann. Rep. int. Whaling Comm.* 2002: 74-5

**7.3.1.2 NORTH PACIFIC EASTERN STOCK OF GRAY WHALES**

The Scientific Committee had reported on recent revised abundance estimates and noted that these will be considered in the AWMP (Aboriginal Subsistence Whaling Management Procedure) trial structure. The Scientific Committee agreed that there was no reason to change its previous management advice.

The Sub-committee noted the Scientific Committee's report.

**7.3.1.3 MINKE AND FIN WHALE STOCKS OFF WEST GREENLAND**

The Scientific Committee had again noted its great concern that it was unable to provide satisfactory management advice for these stocks, particularly given the long periods since the last abundance estimates. It again called for very high priority to be given to obtaining adequate information for management. Without this, the Scientific 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 involved. It strongly recommended that an abundance survey be carried out this year if possible.

In the Sub-committee, several delegations noted that they shared the Scientific Committee's concern. Denmark indicated that they consider the issue extremely important and reported that they were diverting both manpower and financial assistance, both domestically and in co-operation with IWC, to address the scientific shortcomings. Ways to improve the situation were discussed although no recommendations were made.

**7.3.1.4 NORTH ATLANTIC HUMPBACK WHALES OFF ST. VINCENT AND THE GRENADINES**

The Scientific Committee had agreed that it was most plausible that the animals off St. Vincent and The Grenadines are part of the West Indies breeding population (over 10,000 animals in 1992/3) although it acknowledged that further data to confirm this are desirable. It repeated its previous recommendations that every effort be made to obtain photographs and genetic samples from animals taken. In this regard, the Scientific Committee had particularly welcomed news that for the first time, genetic analyses of three samples from the hunt (1 in 2001, 2 in 2002) are being undertaken in a collaborative study. It looked forward to receiving the final report at next year's meeting.

The Sub-committee noted the Scientific Committee's report.

**7.3.2 Commission discussions and action arising**

The Commission noted the Sub-committee's report and endorsed its recommendations. Discussions on specific stocks are summarised in the following sections.

**7.3.2.1 BERING-CHUKCHI-BEAUFORT SEAS STOCK OF BOWHEAD WHALES**

Japan commented that it considers that there is no scientific consistency between the *SLA* and the RMP *CLA* (*Catch Limit Algorithm*). In its view, the *CLA* is too conservative compared with the *SLA*. Japan noted that no catch limits would be set for this stock under the RMP and called for consistency in methods for both commercial and aboriginal subsistence whaling. Norway agreed.

In response to these comments, the Scientific Committee Chair drew attention to Item 5.8 of the Committee's report regarding a comparison of the RMP and AWMP. He noted

that at its meeting last year, the Committee had reported that:

...a strict comparison of the *Bowhead SLA* with the *CLA* is not possible for a number of reasons, particularly with respect to: (1) the different objectives for each, notably the difference between management aimed at producing the highest possible continuing yield and management aimed at satisfying a limited need requirement in perpetuity; and (2) the case-specific nature of the *Bowhead SLA* that was tailored to manage a data-rich population as opposed to the generic *CLA*, that has to be able to cope with a variety of situations.

Norway noted that another aspect to take into account in comparisons between aboriginal subsistence and commercial whaling is the scientific information necessary to estimate abundance and to discuss stock structure. Noting the in-depth assessment for the B-C-B bowhead stock planned for 2004, Norway considered that from a scientific point of view, the same criteria as those used for 'commercially-interesting' stocks such as the western North Pacific stock of minke whales should apply.

The USA referred to the revision to Schedule paragraph 13(b)(1), adopted at the 5<sup>th</sup> Special Meeting of the Commission in Cambridge in October 2002, that renewed the catch limits for the aboriginal take of bowheads from this stock. It reported that, as suggested by the Chair in Cambridge, there had been consultations regarding clarification of the wording of sub-paragraph (iv) but that no conclusion had been reached. The USA therefore wished to place on record that it interprets sub-paragraph (iv) to reaffirm the responsibility of the Commission to review and revise if necessary, the bowhead catch limits following the Scientific Committee's in-depth assessment for 2004. In doing so, the USA considered that the Commission shall be guided by the results of the 2004 assessment.

**7.3.2.2 NORTH PACIFIC EASTERN STOCK OF GRAY WHALES**

There were no comments on this stock.

**7.3.2.3 MINKE AND FIN WHALE STOCKS OFF WEST GREENLAND**

Australia noted the Scientific Committee's and the Sub-committee's concerns regarding Greenland's aboriginal subsistence whaling. It also noted its own concerns regarding the Greenland research programme, the possible market element (see Section 5.2 of Sub-committee report), stock estimates and the inability of the Scientific Committee to provide management advice, and the female bias in takes. In view of these concerns it was uneasy about Greenland's aboriginal subsistence whaling and encouraged Denmark to provide information to next year's meeting that might settle this unease.

**7.3.2.4 NORTH ATLANTIC HUMPBACK WHALES OFF ST. VINCENT AND THE GRENADINES**

The UK indicated its disappointment that St. Vincent and The Grenadines had been unable to attend the meeting of the Aboriginal Subsistence Whaling Sub-committee and requested information on the status of the regulations promised by St. Vincent and The Grenadines last year. In response, St. Vincent and The Grenadines reported that the regulations had been passed in Cabinet on 13 June 2003 and that a copy had been provided to the Secretariat. It noted that the regulations were consistent with the draft made available at IWC/54 last year. The USA complimented St. Vincent and The Grenadines for completing this task.

## 7.4 The Russian Federation proposed Schedule amendment

### 7.4.1 Report of the Aboriginal Subsistence Whaling Sub-committee

The Sub-committee had reviewed a proposal from the Russian Federation to amend Schedule paragraph 13 concerning aboriginal subsistence whaling by the addition of a new sub-paragraph (c) as follows:

13.(c). Notwithstanding any other provision of the Schedule, the meat and products of whales taken by the aborigines are not to be sold or offered for sale, with the exception of blood, plasma, endocrine glands used for biomedical purposes or authentic native articles of handicrafts, including clothing, made wholly or in some respect of whale products.

During the discussions, the Russian Federation had pointed out an anomaly in the way that the Chukotka peoples are treated compared with other aboriginal groups. It referred specifically to Schedule paragraph 13(b)(2) that states

The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines whose traditional aboriginal subsistence and cultural needs have been recognised'.

The Russian Federation proposed to remedy this inequity by deleting the words '*whose traditional aboriginal subsistence and cultural needs have been recognised*'. This phrase is not applied to any of the other aboriginal hunts and the Russian Federation suggested that such conditions prevent the important practice of cultural exchange of goods among indigenous peoples. It wished to achieve consistency among all indigenous groups with aboriginal subsistence whaling operations.

While there was some sympathy among the Sub-committee regarding the objectives of the Russian Federation, it was unable to make any recommendations to the Commission. The Sub-committee Chair noted that the new Schedule amendment proposed by the Russian Federation during discussions should be formally submitted to the Commission.

### 7.4.2 Commission discussions and action arising

In the Commission, the Russian Federation withdrew its proposal to add a new Schedule paragraph 13(c), indicating that it would continue to work intersessionally on this issue with other Contracting Governments.

Commission discussions therefore focussed on the Russian Federation proposal to amend 13(b)(2) of the Schedule as follows:

Replace sub-paragraph 13 (b) (2) of the Schedule to read as follows:

(2) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. ~~whose traditional aboriginal subsistence and cultural needs have been recognised.~~

- (i) For the years 2003, 2004, 2005, 2006, and 2007, the number of gray whales taken in accordance with this sub-paragraph shall not exceed 620, provided that the number of gray whales taken in any one of the years 2003, 2004, 2005, 2006, or 2007 shall not exceed 140.
- (ii) (ii) It is forbidden to strike, take or kill calves or any gray whale accompanied by a calf.
- (iii) (iii) This provision shall be reviewed annually by the Commission in light of the advice of the Scientific Committee.

The Russian Federation urged adoption by consensus.

Although some countries supported the proposed amendment, others, while again expressing sympathy with the objective to treat all aboriginal peoples equally, believed that more time was needed to adequately address this issue. After further discussion, the Commission agreed that a small group should work intersessionally by email to review the whole of Schedule paragraph 13 to determine how consistency in approach could be achieved and to propose a Schedule amendment for review and decision-making at IWC/56 next year. It was agreed that the small group should comprise the Russian Federation, Denmark, Australia and the USA, working with the Secretariat.

## 7.5 Other

In the Commission, the UK referred to discussions at last year's meeting regarding packages of whale meat bought on the Japanese market labelled as coming from Greenland and the Russian Federation<sup>11</sup>. It recalled that the governments of Denmark, the Russian Federation and Japan had agreed to investigate the matter and that Japan had requested samples of the products involved for DNA analysis. The UK noted that the samples had been divided in two, with Japan analysing one set, with the other being stored at the USA's embassy in Tokyo pending issuance of CITES export permits by Japan to enable the second set to be analysed in the USA. It understood that Japan's analyses had revealed that the product labelled as coming from Greenland was in fact minke whale from the Antarctic and that the product labelled as coming from the Russian Federation was Dall's porpoise. The UK requested information from Japan regarding progress in issuing CITES export permits for the second set of samples. Japan responded that since it had analysed one set of samples it did not see any reason to export the second set and indicated that it had no intention of issuing CITES permits. The UK did not doubt Japan's report on the analyses of the samples, but believed that an understanding had been reached that corroborative analysis would be performed. Understanding that it may be difficult for Japan to issue CITES export permits, the UK indicated that it would try to arrange for corroborative analysis to be done in Japan.

Norway and the Russian Federation noted that they believed trade issues to be outside the competence of IWC. The Russian Federation indicated that it was completely satisfied with Japan's report. The UK did not agree with this view on competency, believing such issues to be crucial with respect to the value of any RMS.

## 8. WHALE KILLING METHODS AND ASSOCIATED WELFARE ISSUES

### 8.1 Report from the Workshop on Whale Killing Methods and Associated Welfare Issues

The Workshop was held in Berlin from 7-9 June 2003. It was chaired by Dr Joe Geraci from the National Aquarium, Baltimore, USA, with Dr Nick Gales (Australia) as Vice-Chair. The Workshop report is available as Annex E. As neither the Chair nor Vice-Chair were able to stay on for the Commission meeting, they prepared a short written report summarising their views on the Workshop outcome. This is given in the following paragraphs.

<sup>11</sup> *Ann. Rep. int. Whaling Comm. 2002:22-3*

Twenty-five working papers from nine Contracting Governments were presented and discussed in the context of the Workshop Agenda Items (Description of killing methods in use and under development, Assessment of methods including review of time to death, hunter safety and associated problems, evaluation of criteria for death, collection of animal welfare data, and development of a revised action plan).

While there are still areas in which improvements can be made, there can be little doubt that the papers and discussions at this workshop represent substantial progress in the development and application of killing methods, and these are reflected in a general trend of improved data on time to death and instantaneous death rate. There have also been encouraging improvements in the provision of relevant data on whale killing methods from Contracting Governments, and it is hoped that this trend will continue.

Many of the advances that are detailed in the full report from the Workshop can be attributed to the excellent work of Norwegian scientists, veterinarians and technicians. Their improvements in penthrate grenades, harpoon delivery systems, secondary killing efficiency and post-mortem determination of the effectiveness of the aforementioned have advanced the application of whale killing methods not only in Norway, but also in the several countries to which Norway has provided equipment or technical advice.

It is reasonable to surmise from this workshop that the use of appropriately powerful penthrate grenades, fired from improved delivery systems represents the current state of 'best practice' for a primary killing method. Similarly, several important papers on the ballistics, technical characteristics and field application of guns used as secondary killing methods can now allow users of this technology to make informed decisions on the most appropriate calibre and power choices for their weapons. Moves to incorporate these current 'best practice' methods will (and have been) leading to better and safer outcomes for the hunters, and more humane outcomes for the whales.

Discussions at the workshop highlighted the important practical, logistic and fiscal differences that exist between Commercial Whaling and Aboriginal Subsistence Whaling, particularly in the manner and extent in which data are collected, and the degree to which effort can be invested in the development and application of improved killing methods. Contracting Governments representing Aboriginal Subsistence Whalers were keen to ensure that workshop participants understood these difficulties and the degree to which they contributed to the differences in whale killing techniques and performance between the different types of whaling.

While Japan expressed a view that welfare issues were beyond the competence of the IWC (and excluded themselves from those discussions), and differences were expressed about whether or not killing issues for small cetaceans could be discussed at the workshop, the overall level of cooperation and common ground was a positive feature of this workshop. The positive contributions of non-whaling countries like the United Kingdom and New Zealand to the technical improvement of killing methods, or methods to determine time of death were well received and helpful towards the aims of the workshop. Indeed it is really encouraging to note that consensus was reached on the usefulness of a suite of data identified at the workshop to better assess whale killing methods and associated welfare issues.

The workshop participants also agreed to some minor revisions in the Action Plan, which specifies a continued, cooperative approach to further improvements in data collection and reporting, technical development of killing methods, and criteria and methods to determine death (both operationally and from post-mortem approaches). A further workshop in 3-5 years is recommended, and it is hoped that the improvements represented at this workshop will continue and be a feature of the next meeting.

## 8.2 Commission discussions and action arising

New Zealand indicated that it had been pleased to participate in the workshop. It welcomed progress in the use of the penthrate grenade, but expressed disappointment with the lack of progress in some areas since the last workshop, noting that Times to Death (TTD) in many hunts are still, in its opinion, unacceptably long. With respect to aboriginal subsistence whaling, it regretted that many of these hunts employ small-arms weapons that it believed are inadequate for killing a large animal. New Zealand drew

attention to its remark at the workshop (and included in the report) that the research presented suggested a current level of best practice for determining the minimum specifications of rifles used to kill whales (i.e. a minimum calibre of .375 inches with round nosed full metal-jacketed bullets) and that it would be appropriate to consider a broad implementation of these best practice standards. It acknowledged that this may require investment in new firearms, but in its view, it would be preferable for a village or settlement to have one effective weapon than many of too small a calibre. While agreeing that .375 calibre round nosed full metal-jacketed bullets are very effective for minke whales, Norway did not agree that they should be recommended as a minimum calibre. It drew attention to discussions on this issue at previous whale killing method workshops. Norway noted the importance of marksmanship and training for all calibres and recommended that hunters use the calibre with which they feel most comfortable.

New Zealand and a number of other governments expressed disappointment that some countries had not provided data, including those on the number of animals struck and lost. It called on them to make this available in future. Noting that it does not hunt whales but that strandings occur quite frequently, New Zealand indicated that it would provide welfare data on euthanised whales to the Commission. Mexico recalled a remark from Japan at an earlier Annual Meeting that it may report killing data from its catches under Special Permit elsewhere. It urged Japan to publish this information. Spain agreed. The UK made a similar remark and noted that JARPNII has been extended to from one to five species. Australia commented that there are disparities in some of the TTD reported to the workshop, some of which could be explained by the difficult conditions under which some hunts are performed while others suggested that improvements in hunting practice are need. It noted that while efforts to reduce TTD were welcomed by the workshop, Australia believed that data presented re-inforced its view that current killing methods are not humane. Austria noted the importance of distinguishing between primary and secondary killing methods to the extent possible. Germany noted the importance it gave to this issue. It appreciated the outcome of the workshop, particularly the Revised Action Plan and the consensus reached on the usefulness of a suite of data proposed by the UK to better assess whale killing methods and associated welfare issues. Together with a number of countries, it recognised the contribution of Egil Ole Øen and Norway in this area and thanked Mr Øen for the advice and assistance he has given to other whaling operations. The UK thanked the Chair and the Vice-Chair and the Secretariat for their contributions to the workshop. While it generally supported the Chair's summary report, it considered that it might be rather too optimistic to suggest that widespread improvements have been achieved. It could see no improvement in TTD in Japan's hunts.

The Russian Federation informed the meeting that it had presented all the data it has to the workshop. It noted that it is trying to make its hunts more humane and emphasised that over 70% of the whales harvested in the Russian Federation are taken using a darting gun. Rifles are used mainly as a secondary killing method. The Russian Federation recalled that a previous Resolution requesting all Contracting Governments to provide appropriate technical assistance to improve the humaneness of

aboriginal subsistence whaling had been sponsored by over 12 countries. It noted that it had approached all sponsoring countries, but reported that not one of them had offered to provide help. It did, however, recognise the assistance provided by Norway, Japan and the Alaska Eskimo Whaling Commission. It requested those countries calling for more humane hunts to provide technical support. The Netherlands indicated that they would be willing to work bilaterally with the Russian Federation to explore how support could be organised.

Norway noted the many positive comments on its activities to improve whale killing methods and its contribution to the workshop. It also noted the more positive attitude at this latest workshop compared with those held in the past and that recent improvements and improved knowledge has been recognised. Norway believed that all whaling communities are concerned about the humaneness of their hunts and are trying their best to improve given the resources and weapons available to them and the conditions under which the hunts take place. It noted however that improvements would take time and warned that hunter safety should not be compromised. Regarding comparisons with the killing of other large animals, Norway noted that available data indicate that the TTDs for its takes of minke whales are: (1) better than for all terrestrial mammals except, perhaps, impala; (2) not quite as good as those for seals taken in Norway; and (3) and similar to those in slaughter houses. While recognising that the UK had provided some data in the past on red deer hunts in Scotland, it noted that these data had not included TTDs or the number of animals escaping wounded. Norway urged Contracting governments to provide comparative data. Sweden agreed with the importance of comparisons with other hunts, believed that efforts should be made to improve killing techniques in all hunts, and indicated that it would try to get comparative data from hunts in Sweden.

Denmark drew attention to the progress made in the development of whale killing methods reflected in improved data on TTDs and instantaneous death rates. It noted that it provided these data on a voluntary basis. Denmark considered that it is important to note that a continued dialogue and communication between different groups is needed in understanding the differences between developed and developing countries. It was of the opinion that some have unrealistic expectations in developing even more effective killing methods. Denmark indicated that it is doing its best to reach best practice, but like Norway, believed that hunter safety should not be compromised. It agreed with the comments of the Russian Federation regarding its call for assistance and thanked Norway for the help it had already provided.

Responding to a remark from Australia regarding its planned takes under Special Permit (see Section 12), Iceland emphasised that no decision had been made on: (1) the implementation of the research; or (2) whale killing methods that would be used, although it stressed that cold harpoons would not be used. Australia did not understand why consideration of killing methods had not been included as part of the research plan.

The UK drew attention to document IWC/55/24 listing questions it wished to pose to several Contracting Governments regarding killing methods and associated welfare issues. It noted that this document was submitted for information and that it would pursue the matter

bilaterally with relevant governments. It reported that it had initially requested that these questions be appended to the workshop report, but noted that it had withdrawn this request after several countries objected. It was therefore reluctant to agree to Denmark's request made during the plenary to withdraw the paper.

The Commission adopted the report of the workshop including the Revised Action Plan (see Annex E).

## 9. REVISED MANAGEMENT SCHEME

### 9.1 Revised Management Procedure (RMP)<sup>12</sup>

#### 9.1.1 Report of the Scientific Committee

##### GENERAL RMP ISSUES

The Committee examined a number of general issues related to the RMP. These included: adjustment of the convergence criteria for the CATCHLIMIT program; implications of choice of component of population to which MSYR, MSYL<sup>13</sup> and density-dependence apply in RMP trials; and determination of the levels of information required for *pre-implementation assessments* and for proceeding to an *Implementation*. Considerable progress was made in all of these and agreement reached on the last. Further work is needed on how to deal with situations where whaling occurs on a migratory corridor but abundance estimates are from a summer feeding ground. This will be considered again next year.

Two issues directly related to the Revised Management Scheme were also addressed. The first concerned the implications of restricting whaling to within 200 miles of a whaling nation's coast (or the EEZ). In conclusion, the Committee drew attention to the risk-averse nature of the RMP in distributing catches among *Small Areas*. It noted that any variant of the RMP recommended by the Committee for any species has been judged as displaying satisfactory performance with respect first to risk and then to yield. The Committee was aware of the vulnerability of species to whaling close to the coast and takes this into account in the process of conducting *Implementation Simulation Trials* before the recommendation of an RMP variant to the Commission.

The Committee therefore advised that under the RMP, the restriction of whaling to waters within 200 miles of the coast will have no effect on catches permitted in *Small Areas* that fall entirely or partly within 200 miles of the coast. However, because no catches would be taken in *Small Areas* entirely outside 200 miles of the coast, this additional management measure would reduce risk (to beyond that incorporated in the RMP) but also reduce yield.

The second issue concerned the value or otherwise of collecting tympanic bullae for age determination of minke whales as part of the RMS. The Committee agreed that reliable age determination beyond the first few years was not possible using tympanic bullae and recommended that a requirement to collect bullae should not be included in the Schedule.

##### NORTH PACIFIC COMMON MINKE WHALE IMPLEMENTATION

*Implementation Simulation Trials* are trials that are carried out before using the RMP to calculate a catch limit and

<sup>12</sup> For details of the Scientific Committee's deliberation on this Item see *J. Cetacean Res. Manage.* 6 (Suppl.)

<sup>13</sup> MSYR = Maximum Sustainable Yield Rate; MSYL = Maximum Sustainable Yield Level

involve investigating the full range of plausible hypotheses related to a specific species and geographic area.

The process of developing *Implementation Simulation Trials* is not the same as identifying the 'best' assessment for the species/region, but involves considering a set of alternative models to examine a broad range of uncertainties with a view to excluding variants of the RMP that show performance that is not sufficiently robust across the trials. Account needs to be taken of the plausibility of the various trial scenarios when evaluating RMP variants.

The Committee has been working on *Implementation Simulation Trials* for this area since 1994; a special workshop was held prior to the Berlin meeting. The process has proven to be difficult for a number of reasons, including:

- (1) harvesting is projected to take place on migration as well as on feeding grounds;
- (2) there is a seasonally-dependent overlap of management stocks;
- (3) continual updating of information on relatively complex population structure;
- (4) issues related to the plausibility of trials, particularly with respect to population structure;
- (5) complexity and time required to code and run trials;
- (6) lack of agreement on when to stop 'improving'. Completing this process was one of the major areas of work for the 2003 meeting.

The Committee considered four stock scenarios for the western North Pacific (ranging from 2-4 stocks with various boundaries and levels of mixing) and six management variants (allowing catches in different *Small Areas* and combinations of *Small Areas* and times of year). It also carried out trials with 1% and 4% MSYR and a variety of sensitivity investigations of a number of assumptions including numbers of bycaught animals, level of depletion of the non-target 'J-stock' etc.

There was disagreement within the Committee with respect to the plausibility of the various stock scenarios and this led to lack of consensus over the most appropriate management variant to recommend. Most members supported the management variant (variant 5) that performed best under all stock scenarios, whereas some supported the variant that performed best for the stock scenario that they believed was most plausible (variant 6). Details can be found in Item 6.1 of the Scientific Committee's report.

The Committee agreed that stock structure was the key source of uncertainty for this *Implementation*. It noted that the range and relative plausibility of stock structure hypotheses might change given additional research and new data.

It suggested that, in the light of the concerns about catch performance in coastal *Small Areas*, it would be useful to examine the effect of additional abundance information, definition of alternate sets of *Small Areas*, specification of alternate RMP variants for cascading, and alternate seasonal-area restrictions. Such information could be used to improve the implementation's catch performance in coastal areas, and could be considered in an *Implementation Review*.

A full review of how best to implement the RMP in cases of uncertain stock structure will take place at next year's meeting.

In the light of the implications of the simulations for 'J' stock animals, the Committee strongly endorsed conducting an in-depth assessment of North Pacific minke whales next year to improve understanding and reduce uncertainty.

#### **WESTERN NORTH PACIFIC BRYDE'S WHALES IMPLEMENTATION**

The Committee has made relatively slow progress on completing the implementation for western North Pacific Bryde's whales *inter alia* due to its heavy workload. While noting that it was in the *pre-implementation assessment* stage, the Committee noted the considerable work already undertaken and agreed that it should be possible to move faster towards implementation than would be the case for new situations. It will be an important topic at next year's meeting.

#### **NORTH ATLANTIC COMMON MINKE WHALES - IMPLEMENTATION REVIEW**

The Committee completed an *Implementation Review* of North Atlantic minke whales this year, taking into account new information on stock structure and abundance. The Committee recommended some changes to the Small Area boundaries for the eastern *Medium Area* and agreed that the *Catch-cascading* option at the *Medium Area* level remained the preferred management option. Details can be found in Item 6.2 of the Scientific Committee's report.

#### **BYCATCH AND OTHER HUMAN-INDUCED MORTALITY**

The RMP estimates a limit for the number of non-natural removals, not simply a catch limit for commercial whaling. It is therefore important to estimate the numbers of whales removed from the population by indirect means including bycatches in fishing gear and ship strikes, for example.

The Scientific Committee began to consider this issue in some detail two years ago. It agreed that priority should be given to those areas where the RMP is likely to be implemented – such as the northwestern Pacific and the northeastern Atlantic. Four steps are required:

- (1) identification of the relevant fisheries;
- (2) description and categorisation of those fisheries to allow a sampling scheme to be devised;
- (3) identification of a suitable sampling strategy or strategies; and
- (4) design and implementation of the sampling scheme to enable estimation of the total bycatch.

The Committee has reviewed general methods for estimating bycatches. These fall under two headings: (1) those based on fisheries data and observer programmes; and (2) those based on genetic data. The former have been used successfully for several small cetacean populations. The Committee agreed that independent observer schemes are generally the most reliable means of estimating bycatch rates in a statistically rigorous manner, but that they may not always be practical and will require careful design.

Genetic approaches potentially represent a new way of estimating bycatches. The Committee has agreed that although genetic methods based on market samples may not be the primary approach to estimating bycatch, they could provide useful supplementary data that could not be obtained in another way. The use of market samples to

provide absolute estimates should not be ruled out. However, it will require further developments in sampling design with input from experts with detailed knowledge of market sampling issues. A proposal for a workshop on that subject is being developed for consideration in 2004.

Work to further explore improved bycatch estimation methods for the two approaches noted above is continuing. Improved data reporting for large whale bycatches was also recommended.

The Committee received a very preliminary rough estimate of the total number of bycaught cetaceans in the world. Different assumptions and methods led to estimates ranging from 60,000 to 300,000. Recognising the limitations of the approach, the authors concluded that the estimates provided at least an initial idea of the likely scale of cetacean bycatch globally and the potential problems this may cause populations. The Committee had recommended a number of improvements to the analyses.

### 9.1.2 Commission discussions

#### GENERAL ISSUES

With respect to the Scientific Committee's report concerning the implications of restricting whaling to within 200 miles of a whaling nation's coast (EEZ), interventions were made by Japan and Ireland.

Japan believed that from the biological point of view, such restrictions would increase risk as it would concentrate catches on part of a stock. Additional restrictions on quotas to account for increased risk would decrease yields unnecessarily and be contrary to the principle of optimum use. Japan also believed that monitoring and inspection would be less effective and more costly since more smaller boats that may not be able to carry inspectors or observers would be used and because the number of land stations required would increase thereby requiring more inspectors and observers. It also considered that if whaling were to be restricted to EEZs, whaling would be local and could be managed on a regional or national basis. In these circumstances, Japan believed that a global management body like IWC would be unnecessary.

Ireland recalled that as part of the so-called 'Irish Proposal' it had proposed to restrict whaling to EEZs and stressed that it had never claimed its proposal to be based on science. Rather it had been proposed as a practical means of moving forward as a world community to address both the conservation and management aspects of the Convention. It was pleased to note that the Scientific Committee's report confirmed what Ireland thought might be the outcome of its proposal, i.e. a reduction in both risk and yield. It understood that a decrease in yield would cause problems for some countries, but noted that the proposal had been made as a compromise and as a way to introduce to the public to the idea that under certain circumstances and subject to scientifically-based quotas, a situation could be foreseen where whaling countries could legitimately utilise their whale resources.

#### NORTH PACIFIC COMMON MINKE WHALE IMPLEMENTATION SIMULATION TRIALS

A number of countries complimented the Scientific Committee on completing the Trials and for producing a clear report of what is a complex issue.

Australia stressed the importance of this work in relation to the standing of the RMP. Recalling that the generic *CLA* at the heart of the RMP is designed to address a single

stock scenario, Australia noted that consideration of spatial distribution and mixing of stocks or sub-stocks involving one or more depleted stocks was being tackled by the Scientific Committee for the first time in the context of the North Pacific minke whale *Implementation Simulation Trials*. It believed that the main message from the outcome of the simulations is that spatial considerations are very important and need to be considered whenever stocks overlap. It noted from the Committee's report that catch scenarios allowing coastal whaling in the Sea of Japan resulted in an unacceptable increase in risk of depletion or extinction of the already depleted 'J' stock, and that even in the two more conservative catch scenarios recommended by most of the Scientific Committee, there could be an unacceptable increased risk to this stock under certain conditions. Australia therefore had significant concerns about the results of the Scientific Committee's results as presented.

The USA associated itself with Australia's comments. It noted the unanimous agreement within the Scientific Committee that stock structure is the key source of uncertainty in this implementation and that accordingly most Committee members recommended variant 5 as the preferred management option if the RMP was to be implemented for this population as it is the most robust approach for dealing with uncertainty in stock structure. Consequently, if implementation of the RMP were to proceed, the USA urged adoption of variant 5 or other conservative approaches if the uncertainty over stock structure remained next year. Sweden and the UK made similar remarks.

Monaco was encouraged by the progress made. It noted that while variant 5 seemed to be preferred as it was most robust, variant 6 was not entirely rejected. However, Monaco believed that given the uncertainty that existed, it was clear that if variant 6 was adopted, then the *Small Areas* should be delineated as proposed by the Scientific Committee. Mexico supported the Scientific Committee's recommendation for an in-depth assessment. It believed that given the levels of uncertainty, a precautionary approach should be taken and that therefore variant 5 should be applied. New Zealand associated itself with earlier remarks and believed that the majority of the Scientific Committee favoured taking a precautionary approach to possible future exploitation. It considered that there was only one course of action given the uncertainties, i.e. to start the process over again. It therefore strongly supported the recommendation for an in-depth assessment. In the meantime, New Zealand suggested that Japan should halt the take of 'J' stock animals, release alive minke whales caught in nets, and work to reduce incidental take. Germany and Spain also stressed the importance of reducing bycatch, with Germany taking the view that bycaught animals should not be commercialised thereby reducing incentives for incidental catches.

In view of the uncertainty surrounding stock structure, like others, the Republic of Korea supported the Committee's recommendation for an in-depth assessment and indicated it would contribute to this work with respect to stocks off the Korean peninsula.

Japan and Norway expressed a preference for variant 6 and disagreed with the remarks of Australia and others. Japan believed that the 4-stock scenario (Baseline C) proposed by the USA was implausible and should be withdrawn. It believed that the 'J' stock in the Sea of Japan

had recovered (from 6,000 to 10,000 animals) and noted the increased number of animals bycaught in fixed stationary nets as evidence of this recovery. Japan considered it too early to start an in-depth assessment since it believed insufficient sighting data are available. Norway noted that these *Trials* had been a difficult issue for the Scientific Committee and that in its view, the reasons for these difficulties were political as well as scientific. It felt that the evidence for a 'W' stock is rather weak and considered variant 5, which would not allow coastal whaling, to be rather implausible. It noted that even if variant 6 were to be chosen for the implementation, an implementation review would be required in 6 years, at which point the implementation could be revised if evidence against this scenario became available. Iceland and Grenada associated themselves with Norway. Grenada expressed concern that work on the RMP and RMS was open-ended and suggested that a deadline be set for completion.

At the request of the UK, the Scientific Committee Chair commented on the approach taken by the Committee and on the status of the 'J' stock. He explained that the Scientific Committee tries to take account of uncertainty through the testing of a number of plausible scenarios and reported that within the Committee there was genuine scientific disagreement over the plausibility of the various stock structure hypotheses. He noted however, that in the end, most scientists agreed that none of the four stock structure hypotheses could be regarded as implausible, although this is not to say that they are all given the same level of plausibility by all scientists. Regarding the 'J' stock, he reported that there is considerable scientific uncertainty regarding its status as reflected in the Committee's report and in the range of depletion estimates (i.e. from 15-70%) used in the *Trials*. The Chair explained that the in-depth assessment had been recommended for this reason.

#### **NORTH ATLANTIC MINKE WHALES IMPLEMENTATION REVIEW**

Norway asked the UK whether it had reconsidered its earlier decision not to allow access by Danish and Norwegian survey vessels into its EEZ<sup>14</sup>. In response, the UK reported that new requests would be reconsidered but it noted that none had been received. It had not reconsidered earlier requests in the absence of new ones.

#### **WESTERN NORTH PACIFIC BRYDE'S WHALES**

Japan noted with regret that this work had been delayed yet again and appealed for work to now proceed more quickly. The UK suggested that the lack of progress was because Japan is not forthcoming in providing data on stock structure and abundance. Japan considered this comment incorrect.

#### **ESTIMATION OF BYCATCH**

In response to a request from Denmark for clarification regarding the range of estimated bycatch of 60,000 to 300,000, the Scientific Committee Chair explained that these are estimates including both large and small cetaceans.

#### **9.1.3 Action arising**

##### **SCIENTIFIC COMMITTEE REPORT**

The Commission noted the report and endorsed its recommendations.

##### **PROPOSED SCHEDULE AMENDMENT**

Japan introduced its proposed Schedule amendment to add the following sub-paragraph (g) under paragraph 10:

(g) Notwithstanding the other provisions of this paragraph, the taking of 150 Bryde's whales from the Western Stock of the North Pacific shall be permitted for each of the 2004, 2005, 2006, 2007 and 2008 seasons.

Japan explained the rationale behind its proposal. It noted that the western North Pacific stock of Bryde's whale was classified as an initial management stock (IMS) or a sustained management stock (SMS) when the moratorium was placed on commercial whaling and that present abundance is estimated at 23,751, according to the Scientific Committee's Comprehensive Assessment completed in 1996. It considered the stock to be very robust. It also noted that the RMP, designed to calculate an excessively conservative catch quota that will ensure that there are no adverse effects on the stock, was completed in 1992 and accepted by the Commission in 1994. Japan therefore considered that, together with monitoring and control, the necessary management measures required for sustainable whaling without negatively impacting the stock are available.

On the other hand, however, it noted that work on the development of *Implementation Simulation Trials* has made little progress and that work to develop the Revised Management Scheme (RMS) has continued for more than ten years. It considered that effective monitoring and control measures have been discussed exhaustively and that these discussions have turned into unrealistic demands designed to delay completion of the RMS and implementation of the RMP. At the same time, Japan noted that its former whaling communities have not yet recovered economically after the imposition of the commercial whaling moratorium and that fishery resources are declining due to over-predation by whales and reductions in fishery operations.

In view of the above, Japan indicated that it wished to resume coastal whaling for the sustainable use of robust whale stocks, the management of fishery resources, and the revitalisation of the impoverished coastal fishing and/or whaling communities. It believed that the resumption of coastal whaling would promote the local processing industries, and stimulate distribution of whale products and tourism, leading to more employment opportunities, which will help vitalize the local economy. In addition, the resumption of coastal whaling would also reinstate traditional practices associated with sales of whale meat, and revitalize traditional festivals and rituals of the regions.

Japan went on to describe the specifics of the whaling operations proposed, including provisions for monitoring and control, and the scientific basis for coastal whaling. It hoped that the proposed Schedule amendment could be adopted by consensus.

<sup>14</sup> *Ann. Rep. int. Whaling Comm. 2001: 27*



Mexico, the USA, the Netherlands, Germany, Sweden, Switzerland and New Zealand spoke against the proposed Schedule amendment. The USA noted that it was a completely new proposal to re-start large-scale commercial whaling from land bases. It considered there to be a number of scientific issues that should be taken into account, including: (1) that the Scientific Committee's work on *Implementation Simulation Trials* is not yet complete; (2) that the Committee does not have accurate past catch history data that are important for the RMP; and (3) that catch limits must be calculated by the Scientific Committee, not a Contracting Government. In addition, the USA noted that the provisions for inspection and observation would operate as prior to the moratorium. It found this to be unacceptable. The Netherlands noted that in calculating catch limits, Japan had used a modified version of the RMP rather than that recommended by the Scientific Committee. Noting that the abundance data used was from the period 1988 – 1994, it considered that Japan had ignored the provision within the RMP that provides for the step-wise phase out of catches when the input survey data are over 8 years old. Together with a number of other countries, the Netherlands urged Japan to submit abundance data for this stock to the Scientific Committee.

Norway, Iceland and Dominica spoke in support of Japan's proposal. Norway noted that the stock could be managed under the New Management Procedure that remains valid, adding that the moratorium should have expired by 1990. It considered Japan's proposal as a way to get out of the current impasse. Dominica believed the proposal to be in keeping with the RMP and considered that it should be looked at as an opportunity to provide a way forward towards providing information to complete the RMS.

As there was clearly no consensus on its proposal, Japan requested that it be put to a vote. There were 17 votes in support, 26 against and 2 abstentions. The Schedule amendment was therefore not adopted.

#### RESOLUTION ON BYCATCH

Italy introduced a draft Resolution on bycatch on behalf of the other co-sponsors (Argentina, Australia, Austria, Brazil, France, Germany, Italy, Mexico, Monaco, Portugal, the Netherlands, New Zealand, San Marino, South Africa, Switzerland, Sweden, the UK and the USA). Recalling *inter alia*: (a) previous Commission Resolutions (1998-2<sup>15</sup> and 2001-13<sup>16</sup>) concerning the need to take all human-induced mortalities into account and to reduce bycatch of cetaceans in fisheries; (b) estimated levels of bycatch as referred to in the Scientific Committee report; and (c) recommendations from a January 2002 International Workshop on Reducing Cetacean Bycatch and from the 6th and 7th Conference of the Parties to the Convention on Migratory Species (CMS) the draft Resolution recommended that the Commission:

- (1) commend the work of the Scientific Committee in this area;
- (2) request the Scientific Committee to investigate the feasibility, in co-operation with other relevant international fora such as the FAO and CMS and its relevant agreements, to hold international, regional

and/or national workshops as appropriate, and without prejudice to the competence of regional fisheries organisations, to build scientific and technical capacity in evaluating and mitigating bycatch of cetaceans;

- (3) request the Scientific Committee to report to the Commission at IWC/56 with a detailed proposal on such workshops;
- (4) establish a working group within the Commission with the participation of interested Contracting Governments, representatives of the Scientific and Conservation Committees, appropriate international and regional organisations, and non-governmental observers with relevant expertise, to develop the workshops proposed; and
- (5) establish a dedicated voluntary fund for the facilitation of the above working group.

Denmark expressed disappointment at not being invited to discuss this Resolution prior to it being proposed in plenary, and noted that with regard to estimated bycatch, only the upper estimate of 300,000 had been included and not the estimated range (i.e. 60,000 to 300,000). Concerning the operative paragraphs, Denmark questioned whether these applied to all cetaceans or only large whales and indicated that it believed the last two paragraphs (4 and 5 above) did not make sense. However, it stated that it could support the Resolution if these two paragraphs were deleted, while noting its general reservation to IWC's competence to deal with small cetaceans.

Like Denmark, Norway was perturbed that only the highest bycatch estimate had been used in the draft Resolution. It questioned whether the second operative paragraph was necessary and if so whether such a request to the Scientific Committee has to be done in this way. It considered the third paragraph to be very ambitious and quite costly. It associated itself with Denmark regarding deletion of the last two paragraphs.

The USA and Germany spoke in support of the draft Resolution believing the reduction of bycatch to be a very important issue.

Recalling that at the beginning of the meeting he had requested wide consultation during the preparation of draft Resolutions, the Chair adjourned discussion on this issue and strongly urged the co-sponsors to undertake such consultations. On returning to the matter, Italy reported that it had consulted with all co-sponsors and several other Contracting Governments. It noted the widespread recognition of the need for action to mitigate cetacean bycatch, but that more time is needed to achieve consensus on the Resolution. It was therefore withdrawing the Resolution with the intention to return next year after consultation with a broader and fully representative range of co-sponsors. Italy also noted that a recent scientific workshop on this issue had called for co-operative effort involving relevant intergovernmental and governmental agencies, industry groups, environmental organisations and scientific research organisations to move forward with urgency to address cetacean bycatch, and in particular the need to assist developing country fishermen, both logistically and financially. In this regard, Italy referred to the US\$75,000 donation to the Commission by WWF for research projects to assist efforts to mitigate bycatch in developing countries. It therefore considered it useful if the

<sup>15</sup> *Ann. Rep. int. Whaling Comm. 1998:42*

<sup>16</sup> *Ann. Rep. int. Whaling Comm. 2001:60*

Commission could agree to recommend that appropriate IWC committees develop a proposal for consideration next year regarding the most effective ways to build scientific and technical capacity to evaluate and mitigate bycatch, to consider, *inter alia*, the feasibility of holding various types of workshop (international, national) and to co-operate to the extent possible with relevant international bodies such as FAO and CMS.

## 9.2 Revised Management Scheme (RMS)

### 9.2.1 Report from the Private Commissioners' meeting on the RMS

The Commissioners met in private on 12 and 13 June 2003 to review intersessional work on the RMS and to discuss future steps. Henrik Fischer (Denmark) Commission Vice-Chair chaired the private meeting and reported back to the Commission in plenary.

#### INTERSESSIONAL WORK

In his report, Henrik Fischer recalled that at IWC/54 last year, the Commission agreed to hold a special intersessional meeting of Commissioners, chaired by him, to: (1) examine the outstanding issues (which included items of both a technical and a political nature) required to finalise the RMS for commercial whaling; and (2) specify the future work needed to expedite its completion. This meeting was held in Cambridge UK from 15-17 October 2002.

At that meeting, there had been a valuable exchange of views and ideas on a number of difficult issues surrounding the completion of an RMS, including catch verification schemes, compliance reviews, costs, area restrictions, animal welfare data and other related issues. Progress was made in several areas where fundamental differences had been expressed in the past. A mechanism to build on this progress was established, including the establishment of three special working groups (on costs, catch verification and compliance). It was also agreed that a second special Commissioners' meeting should take place in association with IWC/55 in Berlin.

Henrik Fischer reported that the working groups on catch verification and costs met in Antigua from 28-30 April and 1-3 May 2003 respectively.

The working group on catch verification followed the approach used in the past by the RMS Expert Drafting Group in identifying what needed to be verified, why, and how this could best be achieved (e.g. DNA registers/market sampling, Catch Document Schemes, or both?) in light of the objectives of the RMS and its guiding principles. Although no final consensus recommendation was reached, considerable progress was made in a number of areas and three catch verification options were put forward for consideration by the Commissioners' meeting.

The working group on costs was charged with: (1) identifying and estimating costs of possible components of an RMS; (2) considering how costs might be apportioned among Contracting Governments; and (3) presenting to the Commission one or more options on how RMS costs could be factored into the financial contributions scheme currently under review, while recognising that there is no agreement on whether these elements should or should not be included in the final RMS package. The group 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 developed. The group believed it had achieved as much as it could given the uncertainties involved.

The working group on compliance worked initially via email correspondence but did meet briefly in Berlin. It made progress in resolving areas on which there had previously been no agreement and was able to put forward recommendations to the private Commissioners' meeting.

#### PRIVATE COMMISSIONERS' MEETING, BERLIN

Henrik Fischer noted that the meeting received the reports from the three working groups as well as (1) information from the Workshop on Whaling Killing Methods and Associated Issues regarding the usefulness of data proposed by the UK in assessing whale killing methods and (2) a report from the Scientific Committee particularly in relation to the management implications in terms of risk and yield of restricting whaling to within EEZs or 200 miles of the coast - a question posed by the Commission at IWC/54. It also gave some consideration to what a final RMS 'package' might constitute.

Henrik Fischer reported that although some progress had been made intersessionally, there was no consensus among Commissioners on whether progress to date had been sufficient. He noted that the meeting had been unable to make any recommendations regarding possible components of an RMS or how best it would take this issue further.

### 9.2.2 Commission discussions and action arising

There were no comments on the report from the private Commissioners' meeting.

Henrik Fischer, in his capacity as Commission Vice-Chair, considered it regrettable if no discussions would be held on the RMS prior to the next Annual Meeting. He therefore asked whether the Commission would allow him to convene a small group to explore ways and possibilities to take the RMS process forward. He suggested that such a group could work initially via e-mail, but that a meeting might be needed prior to IWC/56 either intersessionally and/or in Sorrento prior to the plenary. Regarding any intersessional meeting, he suggested this could be held at the Secretariat to minimise costs.

Norway, the USA, Iceland, Germany, Mexico, the UK, the Netherlands, Dominica, Sweden, the Republic of Korea, Australia, St. Lucia and Ireland all spoke in support of the Vice-Chair's proposal, although a number of them also expressed disappointment that more progress on the RMS had not been made. Norway believed the approach should be kept under review in view of cost implications. The USA considered that for reasons of transparency the group should not discuss specific text. Mexico, supported by the UK and Australia, believed the group should be limited to discussions on process rather than negotiating on matters of substance. Australia took the view that little progress had been made in previous discussions on matters of substance (e.g. in the Expert Drafting Group, costs and compliance groups, private Commissioners' meetings) and that a repeat of this would not be constructive. Ireland, on the other hand believed that the group might well be able to explore matters of substance (e.g. by giving further consideration to the Secretariat's presentation on RMS packages) and suggested that the Vice-Chair be allowed to

see how far he could go in making progress. Iceland took a similar view. It also suggested that Henrik Fischer be allowed to constitute the group rather than being directed by the Commission. This was supported by Germany and others. Assuming that the small group would need to report back to the Commission as a whole prior to the plenary, the UK considered that this should be done in an open session. It did not believe the process of meeting behind closed doors to necessarily be constructive. Unlike some, the Netherlands believed that progress on the RMS had been made, particularly over the last year. It suggested that the group proposed by the Vice-Chair think not in terms of minimum and maximum packages but in terms of scenarios that would include consideration of time as one of the parameters. Dominica, supported by St. Lucia, believed that the group should reflect on the reasons for establishing an RMS. It hoped that the group would report back to the Commission with a series of sound recommendations for taking the process further. Sweden considered completion of the RMS to be important and acknowledged that a better process to work towards this is needed. While Australia re-iterated its well-known position on the RMS (i.e. any RMS is inconsistent with its policy to seek a permanent and global ban of commercial whaling), it indicated that it would continue to offer constructive comments. Norway, Iceland, Sweden, the Republic of Korea and Australia indicated that they would be willing to take part in the proposed group.

Japan recalled that discussions on the RMS have been ongoing for many years and noted the 1990 deadline in paragraph 10(e) for completion of the comprehensive assessment of whale stocks and consideration of catch limits other than zero. It considered that with an increasing number of elements being added to the RMS discussions, together with the establishment of the Conservation Committee, it was likely that the RMS would never be completed. It felt that it had made substantial compromises but that the discussions were not being conducted in good faith by others. It was of the opinion that unless there is a clear understanding that 10(e) would be lifted immediately an RMS is agreed, then pursuing the Vice-Chair's proposal may not be worthwhile. These views were shared by a number of other countries. Australia believed that discussions on the RMS and on paragraph 10(e) should be kept separate.

Based on the many positive comments, the Chair invited the Vice-Chair to proceed according to his proposal.

## 10. SANCTUARIES

### 10.1 Reviews of sanctuaries

#### 10.1.1 Improvements to the review process

##### REPORT OF THE SCIENTIFIC COMMITTEE<sup>17</sup>

The Committee's discussions of sanctuaries in the past have been somewhat inconclusive, with attention being drawn to a number of general arguments both in favour of and against sanctuary proposals. This year discussions centred on consideration of existing criteria to review sanctuaries (including Resolution 2002-1 on Guidance to the Scientific Committee on the Sanctuary Review Process), the use and interpretation of the 'Precautionary

Approach', the appropriateness of the use of simulation trials to evaluate sanctuaries and the introduction of the Marine Protected Area (MPA) concept.

##### COMMISSION DISCUSSIONS AND ACTION ARISING

The Netherlands commended the work of the Scientific Committee and endorsed its plans to co-operate with other international organisations.

Japan noted the request of some Scientific Committee members for clarification and elaboration of certain aspects of Resolution 2002-1. Japan agreed that this is necessary. It considered that the first principle regarding temporary overlap of management measures is inconsistent with earlier instructions given to the Scientific Committee, and the second principle on the application of the Precautionary Approach to be an excuse for using worst-case scenarios. Japan believed that the earlier instructions provide a better framework for sanctuary reviews and that Resolution 2002-1 impeded progress in reviews and should be repealed.

Mexico considered it inappropriate for members of the Scientific Committee to request clarification on Resolution 2002-1. The Resolution had been adopted by majority voting and therefore was an instruction to the Scientific Committee from the Commission. Norway took the opposite view. It considered that the Scientific Committee should be independent and should point out potential problems to the Commission.

While Norway found the MPA concept very interesting, it believed that according to international law, MPAs can only be established by sovereign states within their 200 mile zone. It therefore questioned why the concept was being discussed in association with reviews of IWC sanctuaries. Japan expressed similar views. The Netherlands, Australia, Italy, Mexico, Brazil and Monaco disagreed, believing that MPAs are relevant to the Scientific Committee's work. Italy noted that in discussions in both the World Summit on Sustainable Development and the Convention on Biodiversity, recommendations have been made for the establishment of MPAs in waters beyond those of national jurisdiction, and added that it, France and Monaco have established a network of interconnected MPAs largely in the high seas. Monaco commended the Committee for drawing the Commission's attention to the link between sanctuaries and MPAs.

The Commission noted the Scientific Committee report and endorsed its recommendations.

#### 10.1.2 Preparations for the review of the Southern Ocean Sanctuary

##### REPORT OF THE SCIENTIFIC COMMITTEE

The Committee had been asked by the Commission to review the Southern Ocean Sanctuary (SOS) in 2004 and an intersessional working group had been appointed to develop a proposed framework to carry out the review. A number of detailed comments on the review process for the SOS were made and a mechanism to improve the review next year was developed, including co-operation with other organisations. In particular, it believed that outside scientists could contribute in two main areas: (1) to provide advice on how to introduce MPA scientific concepts to the IWC Sanctuaries and Sanctuary proposals and on establishing monitoring programmes; and (2) to evaluate the SOS effectiveness given its objectives and the criteria developed by the Committee and approved by the Commission.

<sup>17</sup> For details of the Scientific Committee's deliberations on this Item see *J. Cetacean Res. Manage.* 6 (Suppl.)

#### COMMISSION DISCUSSIONS AND ACTION ARISING INCLUDING A PROPOSAL TO AMEND THE SCHEDULE

Australia considered that the review of the Southern Ocean Sanctuary will be a performance review against the objectives given in Resolution 1998-3<sup>18</sup> and not on whether the sanctuary should exist or not. The USA agreed and welcomed the Scientific Committee's plans.

With respect to the two points on which the Scientific Committee proposed should be the focus of external non-IWC affiliated scientists, Norway had no problems with the second point, but considered that the first point was unacceptable. This was in line with its earlier intervention (see 10.1.1). Australia agreed with Norway and suggested that the first point be deleted as it is misplaced with respect to the review of the Southern Ocean Sanctuary. It would be more appropriate in relation to criteria for new proposals. The UK agreed with Australia's suggestion but wondered whether problems with point (1) were due to some misunderstanding. The UK did not interpret point (1) as a suggestion that MPAs are established, but rather that some MPA concepts, such as critical habitats are also relevant to sanctuaries.

The Scientific Committee Chair explained that the sense of point (1) is that the scientific concepts developed for assessing the effectiveness of MPAs could also be used to evaluate sanctuaries.

Given the discussion on this issue, the Chair proposed that the Scientific Committee concentrate on the second point, taking into account other scientific concepts, such as MPAs, where appropriate. The Commission agreed.

#### PROPOSED AMENDMENT TO SCHEDULE PARAGRAPH 7

Japan recalled that Article V.2.(b) of the Convention indicates that management measures should be based on scientific findings. It considered that the Southern Ocean Sanctuary was not established in accordance with this provision, and as it has for a number of years, proposed an amendment to paragraph 7 of the Schedule designed to make the Sanctuary more consistent with Article V.2. It proposed to delete the 3rd sentence of paragraph 7.(b) (i.e. '*This prohibition applies irrespective of the conservation status of baleen and toothed whale stocks in this Sanctuary, as may from time to time be determined by the Commission*') and to add a new sub-paragraph (c) as follows:

7. (c) The prohibition described in sub-paragraph (b) above shall not apply unless there is clear advice from the Scientific Committee that it is required for conservation purposes.

The text for the proposed new sub-paragraph was slightly different to that proposed previously<sup>19</sup>.

Norway supported Japan's proposal. It noted that when the Southern Ocean Sanctuary was established in 1994, Norway did not participate in the voting, believing it to be out of order since it did not comply with either Article V.2 (b) or Article V.2.(d) (i.e. that consideration shall be given to the interests of the consumers of whale products and the whaling industry). It considered that these Articles had still not been met.

Australia, Mexico, the USA, Germany, Italy, Monaco, New Zealand, the UK and Sweden found Japan's proposal unacceptable. Australia noted that the purpose of the

Southern Ocean Sanctuary is to provide full protection to whales in the Sanctuary and that Japan's proposal would remove this basic provision. Mexico made a similar comment, stressing that many countries consider sanctuaries as an additional management tool that focus on conservation and the precautionary principle – well-known concepts applied worldwide. The USA disagreed that the sanctuary lacks a scientific basis. In its view, the Southern Ocean Sanctuary:

- (1) safeguards depleted whale stocks in their breeding, feeding and calving grounds;
- (2) complements the protections provided by the Indian Ocean Sanctuary for migratory species;
- (3) facilitates the development of national and international research programmes on depleted stocks and their habitat; and
- (4) promotes biodiversity.

Germany, Italy, Monaco, New Zealand and the UK associated themselves with these earlier statements. New Zealand considered that the proposed amendment raised the question of what action should be taken in the event of scientific uncertainty. It noted that the assumption in Japan's proposed Schedule amendment is that there is an abundance of whales unless the contrary is demonstrated by scientific evidence. New Zealand believed that the opposite assumption should be made in line with the precautionary principle. Sweden supported establishment of relevant sanctuaries, not only from a biological point of view (i.e. in protecting whales and ecosystems) but also because they would provide long-term security from whaling for certain areas even when an RMS is accepted. Sweden believed that this would assure 'whalewatching countries' that their rights would be respected when whaling is made possible and thus facilitate implementation of all objectives of the IWC.

On being put to a vote, Japan's proposal was not adopted. There were 17 votes in support, 26 against and two abstentions.

## 10.2 South Pacific Sanctuary

### 10.2.1 Proposal to amend the Schedule to establish a sanctuary

For the fourth year<sup>20</sup>, Australia and New Zealand proposed to establish a South Pacific Sanctuary as follows:

In accordance with Article V (1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the South Pacific Sanctuary.

This Sanctuary comprises the waters of the Southern Hemisphere enclosed within the following line: starting from the southern coast of Australia at 130°E; thence due south to 40°S; thence due east to 120°W; thence due north to the equator; thence due west to 141°E; thence generally south along the Papua New Guinea – Indonesian maritime boundary to the northern coast of Papua New Guinea at 141°E; thence generally east, south thence west along the coast of Papua New Guinea to the southern coast of Papua New Guinea at 141°E; thence due south to the northern coast of Australia at 141°E; thence generally east, south thence west along the coast of Australia to the starting point.

<sup>18</sup> *Ann. Rep. int. Whaling Comm. 1998:42-43*

<sup>19</sup> For example see *Ann. Rep. int. Whaling Comm. 2000: 14; Ibid. 2001: 17; Ibid. 2002:35*

<sup>20</sup> *Ann. Rep. int. Whaling Comm. 1999:10-11; Ibid. 2000:15-17; Ibid. 2001:17-18; Ibid. 2002:33-34*

This prohibition applies irrespective of the conservation status of baleen or toothed whale stocks in this Sanctuary as may from time to time be determined by the Commission. However, this prohibition shall be reviewed ten years after its initial adoption, and at succeeding ten year intervals and could be revised at such times by the Commission.

New Zealand reported that in addition to Australia, the other co-sponsors of the proposal were Argentina, Austria, Brazil, Finland, France, Germany, India, Italy, Mexico, Monaco, the Netherlands, Peru, Portugal, San Marino, Spain, Sweden, the UK and the USA. It noted that the co-sponsors remain convinced that the establishment of a South Pacific Whale Sanctuary is vital to ensure the conservation of whales in the region since it would complement the protection of all the great whale species that breed in tropical and sub-tropical latitudes and migrate each summer to feeding grounds within the Southern Ocean Sanctuary. New Zealand indicated that most of the eleven great whale species found in the proposed sanctuary area remain seriously depleted after the intensive exploitation last century and that protection of their breeding grounds is critical to ensuring the recovery of these populations. New Zealand also referred to a number of recent studies of humpback whales that have provided new evidence: (1) for low abundance and genetic isolation among the breeding grounds of Oceania; (2) that the region of New Caledonia is a reproductively separate breeding ground with low abundance; (3) for a distinct breeding ground in French Polynesia, unrecorded in historical whaling literature. Referring to the Opening Statement from the South Pacific Regional Environment Programme, New Zealand reported that over the last two years, a total of around 12 million square kilometres of Exclusive Economic Zones have been declared as national whale sanctuaries, demonstrating the widespread and growing support in the South Pacific Region for the proposed whale sanctuary. In view of such a strong expression of the region's aspirations, New Zealand believed it was now time for the Commission to vote in favour of the South Pacific Whale Sanctuary.

Australia reported on developments since IWC/54 that support the proposed sanctuary. At a national level, like New Zealand, it drew attention to the network of domestic whale sanctuaries already in place or proposed. At a regional level it noted that: (1) there had been continued discussions with range states and that there is now a clear sense of regional consensus in support of the proposed sanctuary; (2) in September 2002, the Conference of the Parties to the Bonn Convention (the Convention for Migratory Species) had endorsed Australia's proposal to list all great whales found in the proposed South Pacific Sanctuary area; and (3) that the South Pacific Whale Research Consortium decided in February 2003 to increase its commitment to research in the area. Australia also noted that the future economic well-being of small island states in the area depends heavily on tourism, and that growth of whalewatching (an industry currently worth over 1 billion \$US per year) in the South Pacific is dependent on protection of these migratory species. Finally, Australia noted that national steps can go only so far, and that as the body with global responsibility, IWC must take the lead role in creating the South Pacific Sanctuary.

#### 10.2.2 Commission discussions and action arising

Noting that the South Pacific Sanctuary proposal had not changed since last year, the Chair of the Scientific Committee drew the Commission's attention to previous

Committee discussions, i.e. at the 2001 and 2002 Annual Meetings<sup>21</sup>. The Chair reminded the Commission that the Scientific Committee had not been able to reach consensus and had reported arguments both for and against the proposal.

During the discussions, many of the co-sponsors indicated their support for the proposed sanctuary, with several of them noting the importance of recognising the wishes of the local people. It was also suggested that sanctuaries are important tools in strengthening the conservation agenda of IWC.

Denmark noted that there was nothing new in the proposal compared with last year, and in view of the commercial whaling moratorium and restrictions on the use of factory ships (see Schedule paragraph 8) saw no urgent need for the sanctuary. It also reported that if a protected area is established in Denmark, regulations are adopted to ensure that all necessary safeguards are put in place, i.e. not just a ban on hunting/exploitation of the species to be protected. In the case of whale sanctuaries, Denmark believed that in addition to banning whaling, something that is within the competence of IWC, the rationale for creating a sanctuary would suggest that other safeguards be taken into consideration and adopted, e.g. in relation to shipping, fishing activities including fishing gear, whalewatching and oil and gas exploration and exploitation. It considered that such considerations are missing from the proposal.

Iceland recognised the right of individual States to establish protected areas in waters under their jurisdiction, but believed that it goes against the general principles of international law and the ICRW specifically to close vast areas to whaling without regard to the abundance of different whale stocks in those areas. It considered that IWC should work to protect stocks that need it rather than employing a regional ban on whaling, and it believed that the proposal does not meet the requirements of Article V.2 of the Convention. Iceland urged Contracting Governments not to go against the Convention or the principles of sustainable development and use. Norway supported these views. It believed that the only reason for supporting the sanctuary proposal is the fear that the existing commercial whaling moratorium is not sufficiently robust and durable. Creation of the sanctuary would be a devious means of keeping the moratorium alive. The Republic of Palau indicated that its view had not changed since last year. It remained committed to sustainable use based on sound science and felt that there is insufficient evidence that all whales in the proposed sanctuary area require protection. It could not support the proposal. Japan recalled that no advice from the Scientific Committee supporting the proposed sanctuary had been forthcoming. It believed that stocks of large whales were increasing in the area and that prey species such as tuna may be affected with consequential effects on the economies of small island states. Dominica associated itself with the remarks of Iceland, Norway and Japan. It considered the proposal to be another attempt to circumvent the Convention and believed that the objective of the sanctuary agenda is to close off the seas for the selfish motives of the rich to create a paradise for their tourism at the expense of hunger and poverty. Antigua and Barbuda made similar remarks. St. Lucia noted that it has established MPAs in its own

<sup>21</sup> *J. Cetacean Res. Manage.* 3 (Suppl.): 65-67; *Ibid.* 4 (Suppl.): 65-67

EEZ and was not against conservation, but that it did not believe IWC has the right to establish non-intrusion zones for the rest of the world. It also believed that the proposed sanctuary would have negative implications for shipping and trade and could not support it.

Before allowing the proposed Schedule amendment to be put to a vote, Iceland questioned whether, given its earlier comments, the proposal was admissible. The Chair ruled that it was. Norway challenged this ruling, but the Chair's ruling was upheld when put to a vote, there being 15 votes in support of Norway's challenge, 26 against and 2 abstentions.

The proposed Schedule amendment did not attract the required three-quarter majority when put to a vote. There were 24 votes in support, 17 against and 4 abstentions. Several countries explained their vote. Ireland, who had abstained, indicated that they are supportive of sanctuaries in principle but believed that any new proposals should have maximum consensus and notably support from whaling nations. Referring to its proposed holistic approach put forward some years ago, Ireland indicated that to have voted in favour of the sanctuary would be inconsistent with the 'Irish proposal'. Antigua and Barbuda voted against the proposal as it felt it had been denied a satisfactory explanation. Norway, although it considered the vote out of order, voted against the proposal as it wished its views to be known.

### 10.3 South Atlantic Sanctuary

#### 10.3.1 Proposal to amend the Schedule to establish a sanctuary

For the third year, Brazil introduced its proposal, co-sponsored by Argentina and others, to create a South Atlantic Whale Sanctuary. The amendment proposed was the same as in previous years, i.e., the inclusion of a new sub-paragraph in Chapter III of the Schedule as follows:

In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the South Atlantic Whale Sanctuary. This Sanctuary comprises the waters of the South Atlantic Ocean enclosed by the following line: starting from the Equator, then generally south following the eastern coastline of South America to the coast of Tierra del Fuego and, starting from a point situated at Lat 55°07,3'S Long 066°25,0'W; thence to the point Lat 55°11,0'S Long 066°04,7'W; thence to the point Lat 55°22,9'S Long 065°43,6'W; thence due South to Parallel 56°22,8'S; thence to the point Lat 56°22,8'S Long 067°16,0'W; thence due South, along the Cape Horn Meridian, to 60°S, where it reaches the boundary of the Southern Ocean Sanctuary; thence due east following the boundaries of this Sanctuary to the point where it reaches the boundary of the Indian Ocean Sanctuary at 40°S; thence due north following the boundary of this Sanctuary until it reaches the coast of South Africa; thence it follows the coastline of Africa to the west and north until it reaches the Equator; thence due west to the coast of Brazil, closing the perimeter at the starting point. This prohibition shall be reviewed twenty years after its initial adoption and at succeeding ten-year intervals, and could be revised at such times by the Commission. Nothing in this sub-paragraph shall prejudice the sovereign rights of coastal states according to, *inter alia*, the United Nations Convention on the Law of the Sea.'

Brazil began its introduction by noting the importance it gives to the environmental and social dimensions of sustainability and that without adequate environmental safeguards, it believed that social justice can be seriously compromised. It is this concern that underlies Brazil's national policies. Brazil considered the history of whaling to be one of the saddest examples of the violation of the sustainability principle. Not only did whaling cause damage to stocks shared by many coastal nations, the profit

generated was concentrated in a few developed countries to the great disadvantage of most of the global community. Brazilian society's changing attitudes in the late 1980s saw the flourishing of a wide array of sustainable non-lethal uses such as scientific research, public education and awareness and the development of whalewatching that brings direct benefits to local communities. It believed that the prospect of the resumption of large-scale commercial whaling is again on the horizon, but that while it and other nations are willing to consider the views and needs of whaling countries, it wished to make clear that no agreement could be reached if regional conservation policies are not recognised and safeguarded by the Commission. This was what the proposed sanctuary was designed to do but also to ensure that the participation in good faith of Brazil and other countries with similar views in the work of the Commission would not threaten their sovereign rights to use whale resources non-lethally. Brazil reported that it had consulted with all range states, both IWC members and non-members, to ensure that the proposal was well-known and understood, and that it had received wide support. It urged Contracting Governments to support establishment of the South Atlantic Sanctuary and acknowledge the sovereign right of coastal nations to protect their marine resources.

Argentina indicated that creation of the sanctuary would contribute to:

- (1) the recovery of whale populations and the protection of biodiversity;
- (2) research on depleted stocks and their habitats;
- (3) the promotion of modern educational activities; and
- (4) the development of environmentally-friendly tourism activities in its region.

Argentina stressed its commitment to sanctuaries, including opposition to the abolition of current sanctuaries, and believed that co-operation with CCAMLR and CITES (in view of its long history of supporting IWC's management regulations) is important. Noting recent national regulations designed to protect whales, dolphins and porpoises and the development of whalewatching that has made considerable contributions to improved livelihoods of local populations and increased interest in marine mammals by the public, Argentina also called on the Commission to support the proposed sanctuary.

#### 10.3.2 Commission discussions and action arising

The Chair of the Scientific Committee reported that due to a shortage of time, the Committee had been unable to fully discuss an evaluation of the South Atlantic Sanctuary proposal based on the instructions provided by the Commission and the review criteria. He noted however that there were differing views provided by two evaluations of the sanctuary proposal given in Annex P of the Committee's report.

A number of co-sponsors including South Africa, Germany, Australia, the USA, the Netherlands, New Zealand, Monaco, Spain, Sweden, Portugal, Mexico, Italy and France spoke in support of the proposed sanctuary.

Noting Brazil's reference to the sovereign rights of coastal states, Iceland indicated that it was not familiar that this interpretation applies to the high seas. Rather than repeating the same comments as it made in discussions on the South Pacific Sanctuary proposal, Iceland urged the

Chair to allow the proponents of the South Atlantic Sanctuary to answer two questions, i.e. (1) in what way is the sanctuary necessary for the optimum utilisation of whale resources, and (2) in what way does it take into consideration the interests of consumers of whale products and the whaling industry. It considered that not allowing the proponents to answer these questions would give the impression that they have no legal arguments and are simply pushing their opinion through by the force of a vote.

The Republic of Guinea noted the conflicting interests and contradictions within the Commission giving examples of (1) the RMS on the one side and the maintenance and creation of sanctuaries on the other – questioning the value of an RMS if the oceans were to be closed, and (2) the desire to ensure the survival of depleted whale populations while also wanting to protect species not endangered. Noting concerns regarding competition between whales and fisheries, the Republic of Guinea considered that a balance between pelagic fisheries and whales is necessary. It was disturbed by the notion that whales should be conserved without sufficient scientific evidence at the expense of human food requirements. It believed that a well-developed RMS would provide for sustainable whaling and conservation and therefore could not support the proposed sanctuary. While Benin appreciated the proposal, it could not support it if it is not based on science and drew attention to the fact that there is no consensus on this issue among the Scientific Committee. Gabon made similar remarks. Japan considered the proposed sanctuary to have no scientific basis and to be against the Convention as it would deny sustainable use. Norway indicated that its comments on the proposed South Pacific Sanctuary were also equally valid in this case.

New Zealand addressed the issue of admissibility of both sanctuary proposals as questioned by Iceland. In its view, both proposals were not only admissible but also clearly within the terms of the relevant parts of Article V.2 of the Convention and within Article 31 (3) of the Vienna Convention on the Law of Treaties. Noting that Article V.2.(a) refers to the optimum use of whale resources, New Zealand believed that there is no basis either within the Convention or international law to limit this concept to the killing of whales for human consumption. Regarding Article V.2.(b) that requires Schedule amendments to be based on scientific findings, New Zealand referred to the wealth of material and scientific justifications for the Southern Ocean Sanctuary provided in the supporting paper submitted jointly with Australia (IWC/55/5) which would be pertinent also to the South Atlantic Sanctuary. It further noted that this Article does not make a report from the Scientific Committee in favour of a particular proposal a pre-requisite. Finally, regarding Article V.2.(d) stating that Schedule amendments 'shall take into consideration the interests of the consumers of whale products and the whaling industry', New Zealand considered the whaling industry to include whalewatching, an activity that the Commission has taken into account for many years. Spain, Portugal, Mexico, Ireland and Brazil supported these remarks. In addition, Brazil believed that it is in the best interests of the lethal whaling industry to try to accommodate the needs and concerns of other regions and nations with respect to the management of whale resources and considered it entirely appropriate to propose sanctuaries in regions of the world where the vast majority support their establishment. With respect to the issue of the

scientific basis for the proposed sanctuary, Brazil considered it highly unlikely that the Scientific Committee could achieve consensus since government delegations with different policies tend to have different legitimate views on science.

Iceland thanked New Zealand and Brazil for attempting to answer its questions. It did not dispute New Zealand's comment that optimum utilisation does not just refer to hunting, although hunting is included, but it did contest its remark that the whaling industry includes whalewatching and Brazil's notion that whalewatchers were consumers of whale products. Although 'whaling' is not defined in the Schedule, Iceland pointed to the definition of 'small type whaling' in the Schedule that refers to catching operations. Iceland continued to be of the view that the sanctuary proposal was not in accordance with Article V.2 of the Convention.

The Chair concluded that there was no consensus on the proposal or on the interpretation of the Convention and proceeded to a vote. There were 24 votes in support, 19 against and 3 abstentions. The proposed Schedule amendment to create a South Atlantic Sanctuary was therefore not adopted. Brazil thanked those who supported its proposal, regretted the outcome of the vote but noted that it would continue to pursue the establishment of the sanctuary. Ireland referred to its earlier comments on the South Pacific Sanctuary proposal to explain why it abstained.

## 11. SOCIO-ECONOMIC IMPLICATIONS AND SMALL-TYPE WHALING

### 11.1 Proposal to amend the Schedule

As background to its proposed Schedule amendment, Japan reported on the Second Summit of Japanese Traditional Whaling Regions held on 11 May 2003, and on the Second Summit of Local Governments of Regional Communities and Whales held on 26 May 2003. Both summits issued Declarations supporting the resumption of Japanese small-type whaling on a sustainable basis. Japan subsequently introduced its proposal to add the following sub-paragraph (f) under paragraph 10 of the Schedule:

(f) Notwithstanding the other provisions of this paragraph, the taking of 150 minke whales from the Okhotsk Sea-West Pacific stock shall be permitted for each of the 2003, 2004, 2005, 2006 and 2007 seasons.

As background, Japan recalled that it had been sixteen years since the imposition of the moratorium on commercial whaling in Japanese coastal waters and that during this time, it had repeatedly requested an interim relief allocation of 50 minke whales to alleviate the hardships of its small-type coastal whaling communities. It noted that even though the Commission had recognised the severe impacts of the moratorium on the four small-type whaling communities and had agreed to work expeditiously to alleviate their distress, the Commission had rejected these requests. In the meantime, Japan believed that whale abundance has increased, while its coastal fisheries have become impoverished, leading to considerable discontent among fishermen over the competition between fisheries and whales.

Japan noted:

- (1) the Scientific Committee's Comprehensive Assessment of the Okhotsk Sea-West Pacific stock of

the North Pacific minke whales completed in 1991 showed the stock to be robust;

- (2) that although the RMP had been adopted in 1994 it had not been implemented; and
- (3) that effective monitoring and control measures have been discussed exhaustively and have now turned into unrealistic excessive demands to delay completion and implementation of the RMS.

In view of the above, Japan indicated that it had decided to change its approach. It wished to resume community-based whaling for the sustainable use of robust whale stocks, the management of fishery resources, and the revitalization of the impoverished community-based coastal whaling communities. It noted that all the edible parts of the harvested whales would be used as food, and a substantive part of them distributed primarily among the four community-based coastal whaling communities and neighbouring areas, as well as Kushiro, where a land station would be built. It considered that the resumption of community-based whaling would promote the local processing industries and stimulate distribution of whale products and tourism, leading to more employment opportunities, which would help to vitalise the local economy. It also believed that the resumption of community-based whaling would reinstate traditional practices associated with sales of whale meat, and revitalize traditional festivals and rituals of the regions.

Japan went on to give specifics of the proposed whaling operation (whaling ground, season, catch quota) and monitoring and control provisions.

### 11.2 Commission discussions and action arising

Sweden indicated that it could not support Japan's proposal as it is in contravention of the moratorium and since any catch limit agreed to in the future must be under an RMS agreed by the Commission. It noted that the proposed take of 150 minke whales from the Western North Pacific is in addition to the 150 minke whales taken annually by as part of JARPNII and the 100+ bycaught animals. Sweden considered that the proposal, like that for Bryde's whales (see Item 9.1.3), is not based on the RMP adopted by the Commission but on modifications to it and ignores the phase-out rule and evidence for complex stock structure of minke whales in the North Pacific. It strongly urged Japan to withdraw the proposal and to submit its recent abundance data to the Scientific Committee for use in the in-depth assessment planned for next year. In addition to the problems highlighted by Sweden, Monaco believed that an essential flaw of Japan's proposal was that it would effectively open a new category of whaling and would suffer the same fate as previous proposals in previous meetings. It asked Japan how much of the 150 minke whales taken in JARPNII is despatched to meet the needs of the coastal whaling communities. The UK shared Sweden's views. Recalling that in the past Japan appeared to require only 50 minke whales per year to alleviate the distress of its coastal whaling communities (which it is now taking through expansion of the JARPNII programme), the UK noted that Japan is now requesting a take of a further 150 minke whales per year. It therefore questioned how many whales are actually needed to alleviate distress, taking into account that Japan's coastal communities are harvesting other cetaceans such as Baird's beaked whale

(which it considered should be covered by the moratorium). The UK indicated that it would have more sympathy with Japan if the proposal was on a much smaller scale and if the products derived were distributed to these communities on a non-commercial basis. The USA also agreed with Sweden. It considered the proposal to be for commercial whaling and encouraged Japan to develop an Action Plan consistent with the moratorium and based on advice from the Scientific Committee. Switzerland associated itself with the remarks of Sweden and the USA. It considered Japan's proposal to be premature and supported work to complete the RMS. Germany and Mexico also associated themselves with previous speakers. Indicating that, as a general rule, resumption of commercial whaling should await completion of the RMS, Denmark noted that it had in the past supported Japan's request for an interim relief allocation of 50 minke whales. However, it considered the latest proposed Schedule amendment to be very different (5-year period rather than one year; 200% increase in the number of whales to be taken) and was not able to support it. The Republic of Korea insisted that small-type coastal whaling should not be carried until after completion of the RMS and should be based on scientific advice.

Norway, Iceland, Antigua and Barbuda, Dominica, the Solomon Islands, the Republic of Guinea, Benin and the Russian Federation all supported Japan. Norway referred to Monaco's remark regarding establishment of a new whaling category and agreed that this could be a problem. It did not wish to see another category created but believed that Japan's proposal could be considered as a way of accommodating the legitimate needs of the coastal communities particularly in view of the failure of IWC to meet its management responsibilities. Iceland noted that there are only two types of whaling, sustainable and non-sustainable. Since Japan's proposal was for sustainable whaling, Iceland could support it. Antigua and Barbuda considered the stock in question to be abundant. It noted that Japan had demonstrated the hardship of its coastal communities and considered that it was time to respect their rights. Dominica and the Solomon Islands made similar remarks. The Republic of Guinea and Benin questioned why the Japanese whaling communities were being treated differently to aboriginal subsistence whaling communities. The Russian Federation supported Japan's proposal since it had a serious scientific basis and complies with the principle of sustainable use and acknowledges the traditional needs of the community.

Japan thanked those governments supporting its proposal. In responding to Sweden, Japan believed that modifications to the RMP were scientifically sound and that the phase-out rule had been taken into account. It noted that since the proposal would restrict takes to the 'O' stock, an in-depth assessment is not necessary. With respect to comments from Monaco, Japan recalled that Articles V and VIII of the Convention address whaling and therefore it is not proposing a new whaling category. It reported that 15 of the minke whales currently taken are provided to the coastal communities, commenting that this is not sufficient to meet need. In responding to the UK, it noted that its take of Baird's beaked whales is a legal whaling activity, that its request could not be reduced and that quotas should be based on stock abundance, and that the commercial element is necessary for the livelihoods of the coastal communities.



Japan's proposed Schedule amendment was not adopted when put to a vote. There were 19 votes in support, 26 against and one abstention.

## 12. SCIENTIFIC PERMITS

### 12.1 Report of the Scientific Committee<sup>22</sup>

#### 12.1.1 Improvements to review procedures

Last year, the Committee had noted that the existing guidelines, which had developed over a number of years, inevitably include some duplication and overlap within the broad headings used. With the aim of providing a proposal to the Commission on restructuring the guidelines, it agreed to revisit this issue in a year in which there is no major new scientific permit proposal to review.

The Scientific Committee also agreed to start planning for the review of the final JARPA results, which are expected in 2005, and recommended that a small intersessional Working Group be formed, including *inter alia* some Japanese scientists familiar with the programme.

#### 12.1.2 Review results from existing permits

##### JAPAN: SOUTHERN HEMISPHERE (JARPA)

The Committee received a number of reports of work undertaken as part of the recent field season of JARPA as well as documents using some or all of the JARPA data collected thus far. These were considered where relevant to the main Scientific Committee agenda.

##### JAPAN: NORTH PACIFIC (JARNPII)

The Committee reviewed the results of the first full year of the JARNPII programme reviewed last year<sup>23</sup>. A total of 100 common minke, 50 Bryde's, 39 sei and 5 sperm whales were taken. It agreed that a more detailed review should be undertaken after the completion of the two years of research under JARNPII. For this review, comprehensive results will be provided, including recalculation of sample sizes.

#### 12.1.3 Review of new or revised proposal

##### JAPAN: SOUTHERN HEMISPHERE

The Committee briefly discussed the JARPA proposal. This is a continuation (15<sup>th</sup> year) of a 16-year programme. Progress had been fully reviewed in 1997.<sup>24</sup>

##### ICELAND: NORTH ATLANTIC

Most of the discussion at the 2003 meeting centred on the proposal for a two-year feasibility study in Icelandic waters involving the taking of 100 common minke whales, 100 fin whales and 50 sei whales. The stated goal was to improve understanding of the biology and feeding ecology of important cetacean species in Icelandic waters for better management of living resources based on an ecosystem approach. It includes multiple specific objectives with different priorities for the different species. For common minke whales the primary specific objective is to increase the knowledge of the species' feeding ecology in Icelandic waters. For fin and sei whales the primary specific objective is the study of biological parameters during the apparent increase in population size in recent decades. These objectives are the basis for the proposed sample sizes. Other research objectives include studies of

population structure, pollutants, parasites and pathogens, and the applicability of non-lethal methods.

There was considerable disagreement within the Committee over most aspects of this research programme, including objectives, methodology, sample sizes, likelihood of success, effect on stocks and the amount and quality of data that could be obtained using non-lethal research techniques.

### 12.2 Commission discussions and action arising

Japan gave a short PowerPoint presentation on its JARPA and JARNPII programmes. There was no discussion.

The Commission noted the Scientific Committee report and endorsed its recommendations.

#### *Resolution on whaling under Special Permit*

Germany introduced a draft Resolution on Whaling under Special Permit on behalf of the other co-sponsors (Argentina, Australia, Brazil, Finland, France, Germany, Ireland, Italy, Mexico, Monaco, Netherlands, New Zealand, Portugal, San Marino, Spain, Sweden, Switzerland, UK, USA). The draft Resolution called on the Commission to:

- (1) express deep concern that the provision permitting Special Permit whaling enables countries to conduct whaling for commercial purposes despite the moratorium on commercial whaling;
- (2) state that the current and proposed Special Permit whaling operations represent an act contrary to the spirit of the moratorium on commercial whaling and to the will of the Commission;
- (3) state that Article VIII of the Convention is not intended to be exploited to provide whale meat for commercial purposes and shall not be so used;
- (4) reaffirm that non-lethal techniques available today will usually provide better data at less cost to both animals and budget; and
- (5) urge any country conducting or considering the conduct of Special Permit whaling to terminate or not commence such activities and to limit scientific research to non-lethal methods only.

Germany specifically referred to the ongoing programmes of Japan (JARPA and JARNPII) and that planned by Iceland and indicated that it did not believe that the scientific arguments used to defend such programmes stood the test of thorough scientific scrutiny. In addition, it noted that it believed that over-fishing is causing declines in fisheries, not the fact that whales eat fish.

The USA associated itself with Germany's remarks. It remained opposed to Japan's lethal research programme in the North Pacific and noted that many Scientific Committee members were of the opinion that there were no quantifiable objectives and reasonable performance standards to legitimise the study. The USA particularly objected to the expansion to takes of sei whales and 50 minke whales in coastal waters and drew attention to the numerous Resolutions adopted noting that the data from permit catches are not critical to management. Regarding

<sup>22</sup> For details of the Scientific Committee's deliberation on this Item see *J. Cetacean Res. Manage.* 6 (Suppl.)

<sup>23</sup> *J. Cetacean Res. Manage.* 5 (Suppl.):63-77

<sup>24</sup> *Rep. Int. Whal. Commn* 48:95-105

Iceland's proposed research plan, the USA considered it to be almost the same as its previous feasibility study between 1986 and 1989, noting that data on stomach contents from the fin and sei whales taken remain generally unpublished. The USA believed that the only part of the latest proposal relevant to IWC management is the secondary objective on population structure, but noted that such work is now routinely studied using non-lethal techniques involving genetic analysis from skin biopsies.

New Zealand agreed with the comments of Germany and the USA regarding the JARPNII programme. Regarding Iceland's proposed research plan, New Zealand believed that it was clear from the Scientific Committee report, that many of the scientists had difficulties with the scientific rationale underpinning the proposal, particularly because, like JARPNII, it appeared to be mainly concerned with issues of no direct relevance to the Convention. New Zealand considered Iceland's research plan to be outside the Terms of Reference for such proposals. It also asked how Iceland intended to dispose of any whale products generated from such a study, if implemented. Monaco associated itself with the views of Germany, the USA and New Zealand and considered the lethal research programmes to be rather outdated. The UK, Mexico, Australia, Spain, Sweden, Switzerland and Austria made similar remarks as previous speakers. While the UK recognised that lethal research programmes have provided some useful data, it believed this had been done at considerable cost in terms of the number of whales killed. It was disappointed that Iceland had put forward a research plan and commented that Iceland's ecotourism industry would be damaged if it resumed whaling. As Iceland was not yet committed to when it might implement its plan, the UK urged it to reconsider. Mexico, Switzerland and Australia expressed particular concern regarding the proposed take by Iceland of fin and sei whales. Brazil was concerned regarding the increasing number of whales being taken under Special Permit and considered it an abuse of Treaty rights. Sweden considered that the analysis of the diet of whales is important but believed that such work should await the resumption of commercial whaling. With respect to Iceland's research plan, Austria considered that it should have included information on intended whale killing methods. It also expressed interest in learning of the costs of such a programme. It did not consider Iceland's proposal to be finalised, and hoped that Iceland would submit a final version for review by the Scientific Committee in 2004 or later.

Norway noted that the draft Resolution targeted three different operations. It noted that Japan's JARPA programme had been reviewed by the Scientific Committee and that the Scientific Committee had generally agreed that it had provided new interesting information. Norway further noted that this programme had only two seasons left to run and that consequently there would be no point in stopping it now. With respect to Japan's JARPNII programme and Iceland's proposal, Norway noted that these were designed, *inter alia*, to study feeding ecology and would provide critically important information for the understanding of interactions between species and in the long-term provide information needed for multispecies management. Norway referred to two NAMMCO workshops on this subject. The Republic of Korea considered that ecological data are needed and in view of the limitations of non-lethal research, considered that

appropriate lethal research is needed. Dominica made similar remarks. Denmark drew attention to Article VIII of the Convention regarding the right of Contracting Governments to issue Special Permits for lethal takes for research purposes. While it considered the report of the Scientific Committee on its review of existing and new proposals entirely appropriate, Denmark did not believe it appropriate to establish a Commission policy on scientific permit whaling since this would be contrary to the Convention. It indicated that it would not participate in any vote on the Resolution. Antigua and Barbuda also referred to the rights given under Article VIII and that the Convention requires whales taken under Special Permit to be utilised. It noted that UNCLOS encourages marine scientific research and drew attention to the fact that lethal research on other animals is conducted in many IWC member countries, including those opposed to Special Permit whaling.

In responding to the comments made concerning its proposed research plan, Iceland noted that most of them were of a scientific nature and that the Commission, a political forum, was not the right place to discuss science. It stressed its right under the Convention to conduct lethal research and to utilise the whales taken, but noted that scientific permit whaling is not commercially viable. Iceland drew attention to the different views expressed with the Scientific Committee on the merits of its proposed research plan, and felt that the draft Resolution misrepresented the Committee's discussions. It also considered that the draft Resolution contained incorrect statements. It believed that the bottom line was that there is a fundamental divide among Contracting Governments on how to look at whales and believed that IWC should be guided by law rather than emotion.

Like Iceland, Japan also drew attention to its rights under Article VIII of the Convention and could not understand why these could not be accepted. It referred Contracting Governments to its original research plans for their scientific justification and did not agree that its research is not relevant to management. Japan also noted that the results of its research are published in both domestic and international scientific journals, and asked that papers were not discriminated against merely because they used data obtained from lethal research.

The Resolution was passed when put to a vote (Resolution 2003-2, Annex F). There were 24 votes in favour, 21 against and one abstention.

*Resolution on southern hemisphere minke whales and Special Permit whaling*

Australia introduced a draft Resolution on Southern Hemisphere minke whales and Special Permit whaling on behalf of the other co-sponsors (i.e. Argentina, Austria, Brazil, Finland, France, Germany, Italy, Mexico, Monaco, New Zealand, Portugal, San Marino, South Africa, Spain, Sweden, Switzerland, UK and USA). Noting, *inter alia*, that Japan continues to issue Special Permits for lethal scientific research on minke whales in the Southern Ocean Sanctuary when there are no valid abundance estimates for this population and when alternative non-lethal techniques are available, the draft Resolution called on the Commission to:

- (1) request the Scientific Committee to provide, after completion of the IDCR/SOWER abundance estimates, all plausible hypotheses to explain any

decline in abundance estimates that may emerge and in doing so to consider fully (a) the possible negative impact of the take of minke whales, including struck and lost data, and (b) the impact of environmental change factors;

- (2) call on Japan to halt the JARPA programme, or to revise it so that it is limited to non-lethal research methodologies; and
- (3) recommend that no additional JARPA programmes be considered until the Scientific Committee has completed (a) an in-depth review of the results of 16 years of JARPA, (b) its review of abundance estimates for Southern Hemisphere minke whales and (c) the actions requested above, and that any such programmes be limited to non-lethal research.

Australia considered the large-scale whaling operation conducted under JARPA that had taken over 6,000 whales from the Southern Ocean Sanctuary to be an affront to the Commission and to the commercial whaling moratorium and believed that the overwhelming purpose of JARPA is to maintain a supply of whale meat to markets for commercial return. Finally, Australia considered that the hypothesis that too many fish are eaten by whales had already been repudiated by respected scientists and that depletions in global fisheries are caused by over-fishing. It urged all members of the Commission to support the Resolution. New Zealand, Germany, the USA, Monaco and Brazil spoke in support of the Resolution. The USA noted that the current JARPA programme has only 2 years remaining. It looked forward to its completion and hoped that there would be no extension. Monaco stressed that the legality of issuing scientific permits was not being challenged, but considered that the numbers of whales now being taken under Special Permit is much larger than envisioned when the Convention was established. Brazil considered JARPA to be a violation of the Southern Ocean Sanctuary.

Japan acknowledged that a new estimate for minke whale abundance in the Southern Hemisphere should be available in two years, but noted that results from JARPA in Areas IV and V have shown minke whale populations to be stable. It re-iterated that some of the information gathered through JARPA cannot be obtained by non-lethal techniques. Responding to Brazil, Japan pointed out that it has an objection to the Southern Ocean Sanctuary with respect to minke whales, and that, while it has a responsibility to report data from JARPA to the Scientific Committee and the Commission, it has a right under Article VIII of the Convention to issue Special Permits. Norway noted that the draft Resolution referenced Scientific Committee reports from 2000 and 2001 and considered that it should have referred to the latest Committee report in which some of the statements are not now so strong. In any case, Norway believed that the number of whales taken under JARPA is insignificant in terms of the size of the stock. Antigua and Barbuda re-iterated its earlier remark concerning other lethal research and Iceland again commented that the Commission was being driven by politics, not science. Monaco disagreed. Dominica commended Japan for its work under JARPA and looked forward to the establishment of a similar programme in future to provide information to allow the sustainable use

of cetacean resources, whether this be whalewatching or for food.

Responding to a question from Monaco, the Scientific Committee Chair clarified that there is currently no agreed abundance estimate for Southern Hemisphere minke whales but that the Committee expects to provide a new estimate in two years time.

The Resolution was adopted when put to a vote (Resolution 2003-3, Annex G). There were 24 votes in favour, 20 against and one abstention.

### 13. ENVIRONMENTAL AND HEALTH ISSUES

There is an increasing awareness that whales should not be considered in isolation but as part of the marine environment; detrimental changes to their habitat may pose a serious threat to whale stocks. The Scientific Committee has examined this issue in the context of the RMP and agreed that the RMP adequately addresses such concerns. However, it has also emphasised that the species most vulnerable to environmental threats might well be those reduced to levels at which the RMP, even if applied, would result in zero catches. Over a period of several years, the Scientific Committee has developed two multi-national, multi-disciplinary research proposals, one concerning co-operative research in the Antarctic (SOWER 2000) and the other concerning the effect of pollution on cetaceans (POLLUTION 2000+).

#### 13.1 Cetacean-fisheries interactions

##### 13.1.1 Report of the Scientific Committee

The Committee has begun to look at the issues surrounding fisheries and cetaceans. The main long-term objective of the Committee on this topic is to answer the question 'how are changes in abundance of cetaceans likely to be linked (in the short- and long-term) to changes in fishery catches?' A Workshop to address modelling-related issues related to the interactions between cetaceans and fisheries was held in July 2002. Its aim was to evaluate existing modelling approaches, including identifying their constraints and data requirements, in order to identify those approaches most likely to answer the above question. The Workshop reviewed all the available major modelling approaches that deal with top predators and multi-species fisheries interactions.

The Workshop concluded that despite recent advances, most multi-species models are still in the development phase. It therefore agreed that no single approach could be recommended at this stage to provide reliable information of value to consideration of cetacean dynamics in an ecosystem context. However, this does not necessarily rule out the possibility that useful inferences might be drawn if a number of different modelling approaches yield qualitatively similar results. The Workshop also agreed that despite these difficulties, the consideration of ecosystem interactions between fish stocks and cetaceans is a potentially important research topic.

The Committee endorsed the Workshop conclusion that for no system at present are we in the position, in terms of data availability and model development, to provide quantitative management advice on the impact of cetaceans on fisheries, or of fisheries on cetaceans. However, this does not rule out the possibility of providing qualitative advice if a number of different approaches yield qualitatively similar results. It also endorsed the conclusion

that consideration of ecosystem interactions between fish stocks and cetaceans is a potentially important research topic in a general sense; however, there was disagreement as to whether further pursuit of this matter was likely to be helpful to the Committee in providing advice to the Commission regarding the management of whale populations.

### *13.1.2 Commission discussions and action arising*

The USA noted that it had been pleased to host the workshop, thanked the Scientific Committee for its work on this topic and encouraged further discussions to promote the understanding of this issue. The USA remarked that while some countries argue that whale numbers must be reduced to protect commercial fish stocks, the USA considered that the primary reason for declining fish stocks is over-fishing. New Zealand, Australia and Monaco expressed similar views. New Zealand referred to a recent article in the journal *Nature* charting the decline in the world's fisheries over the past 50 years. The article reported, *inter alia*, that industrialised fisheries typically reduce biomass of targeted species by 80% within 15 years of exploitation and that since 1950, some 90% of the world's large tuna has been removed by pelagic long-liners. New Zealand considered this evidence to be at odds with Japan's assertions that whales are responsible for the decline of tuna resources in the South Pacific. Referring to a paper submitted to the workshop by Australian scientists, Australia believed that the modelling of ecosystems required a complexity that took the issue far beyond the 'whales eat fish' argument. Monaco considered that whales should not be used as the scapegoat of irresponsible fisheries. It encouraged developing countries to direct their anger at industrial fishery operations. The UK expressed its regret that Japan had been unable to attend the IWC workshop given the importance it attaches to this issue.

Norway, Japan and Iceland spoke of the importance of research into cetacean-fisheries interactions. Norway noted that it, Iceland and others are performing research in this area but that this would probably be under the auspices of NAMMCO rather than IWC. Japan believed that this issue is one of the most important issues to be addressed by IWC but contested that it had ever stated that whales were entirely responsible for declines in fisheries. Rather it considered the three main reasons to be over-exploitation, habitat degradation and marine mammals. It noted that since Resolution 2001-9<sup>25</sup> on interactions between whales and fish stocks was adopted by the Commission at the 2001 Annual Meeting, FAO and a number of regional fisheries organisations had made similar commitments to work in this area. It further recalled that the implementation of an ecosystem approach to fisheries management is one of the goals of the Johannesburg Plan adopted at the 2002 World Summit on Sustainable Development. Japan indicated that this issue continues to be a priority for Japan and that it would continue its research and report the results to the Scientific Committee. Iceland agreed with earlier statements that the main reason for the decline in fish stocks is over-fishing, not whales, but believed that the role whales play in the marine ecosystem should be recognised and not disregarded. It stressed that problems in fisheries are the result of bad management. Iceland believed that referring to declines in fisheries as a global problem is an

oversimplification as there are some well-managed fisheries. Germany appreciated Iceland's statement regarding over-fishing but questioned whether this is sufficient reason to kill whales.

Responding to a remark from Japan, Australia considered that the FAO and regional fishery bodies were being slightly overwhelmed by the issue of cetacean/fishery interactions – an issue that was spilling-over from the debate within IWC. The focus of the work of these bodies is on fisheries management not whales.

The representative from NAMMCO informed the meeting about its ongoing work on marine mammal-fisheries interactions, noting that it welcomed co-operation with others.

The Commission noted the Scientific Committee's report and endorsed its recommendations.

## **13.2 High latitude climate change effects on cetaceans**

### *13.2.1 Report of the Scientific Committee*

#### **SPECIAL SESSION ON SOUTHERN OCEAN CLIMATE CHANGE AND CETACEANS**

The Committee held a special session on Southern Ocean climate change and cetaceans. In particular, it considered two presentations, one summarising work on krill, its physical environment, competitors and predators, and emphasised major findings and current hypotheses. The other focussed on the US SO-GLOBEC programme, and described the integrated study of physical and biological oceanography, krill and krill predators, noting IWC collaboration with respect to cetaceans. The implications of this work (much of which occurs outside the normal timing of Antarctic cetacean research) for other aspects of the IWC's work (e.g. see the Antarctic minke whale section above) was noted.

#### **SO-GLOBEC/CCAMLR**

The Committee reviewed a number of papers covering the ongoing collaboration with SO-GLOBEC and CCAMLR. It expressed its strong endorsement of this collaborative work and recommended that this work be continued.

### *13.2.2 Commission discussions and action arising*

The Netherlands supported continuation of the SO-GLOBEC work. No other remarks were made.

The Commission noted the Scientific Committee's report and endorsed its recommendations.

## **13.3 Habitat-related issues**

### *13.3.1 Report of the Scientific Committee*

#### **POLLUTION 2000+**

Many analyses have been completed for the bottlenose dolphin sub-project, while for the harbour porpoise sub-project, progress has been made on immunohistochemistry analyses. The Committee noted that the ability to attract additional funding for this project will ultimately determine the products that are completed and the project's success.

The Committee strongly supported this programme and endorsed its continuation.

#### **STATE OF THE CETACEAN ENVIRONMENT REPORT (SOCER)**

Following discussions last year, the Committee reviewed the preliminary version of the State of the Cetacean Environment Report; it originated in response to a request from the Commission for such an overview.<sup>26</sup> The SOCER is not intended to be exhaustive, but rather to provide a

<sup>25</sup> *Ann. Rep. int. Whaling Comm. 2001:58*

<sup>26</sup> *Ann. Rep. int. Whaling Comm. 2001:56-7*

brief 'snapshot' of the cetacean environment for the non-specialist reader. The Committee concluded that the process leading to the current SOCER draft (see Annex K of the Committee's report) had been satisfactory and that a useful product had been produced.

#### ARCTIC ISSUES

The Committee noted that a new research initiative focused on the sub-Arctic is taking form under the GLOBEC organisational umbrella. The new initiative is called Ecosystem Studies of Sub-Arctic Seas (ESSAS) and will provide opportunities for collaborative studies of cetacean ecology (<http://www.globec.org>).

#### HABITAT DEGRADATION

Last year, the Committee recommended that: (1) the Commission request information from the Government of Mexico on the specific locations and types of construction comprising the 'Nautical Steps' tourist development; and (2) the Commission request the Government of Mexico to take steps to ensure the maintenance of habitat important to cetaceans. The Committee thanked the Government of Mexico for providing a response (SC/55/O25). After considering the available information, the Committee expressed concern about the potential negative effects of this commercial development on local cetaceans and their habitats. It expressed disappointment that specific information requested last year was not made available in SC/55/O25, and therefore reiterated its request made last year.

The Habitat Degradation Workshop has been under consideration by the Committee for some years<sup>27</sup>. The workshop proposal was endorsed by the 2001 and 2002 meetings of the Scientific Committee. It was also recognised as important by ACCOBAMS. However, to date, funding has not been made available to conduct the workshop. The Committee reiterated its ongoing support for the workshop and recommended that it be held this year if funds are made available.

#### ACOUSTIC ISSUES

The Committee spent some time considering noise pollution and cetaceans. It was noted that considerable progress has been made in understanding noise pollution, including the development of tools to quantify exposure levels for individuals and populations. The challenge remains to interpret the biological impact of physiological or behavioural responses to anthropogenic noise exposure.

The Committee expressed concern about the emerging threats to cetaceans from man-made sound, including *inter alia* deliberate deployment of powerful acoustic sources. Noting the emerging role of the US Marine Mammal Commission (MMC) in addressing these issues, the Committee recommended:

- (1) that the Secretariat contact the US MMC with a request for exchange of information and potentially the development of cooperative research in order to combine the expertise of both bodies;
- (2) that workshops generated under the auspices of the US MMC 'noise programme' should include Scientific Committee representation where appropriate; and

- (3) that appropriate representatives of the US MMC should be invited to attend the next Scientific Committee meeting to discuss progress in this field.

#### 13.3.2 Commission discussions and action arising

The Netherlands supported continuation of POLLUTION 2000+.

Australia expressed concern regarding the level of contaminants with human health implications found in whales killed as part of the JARPNI programme as reported in document IWC/55/23 submitted by Japan. It noted in particular the high levels of mercury and cancer-related PCBs found in North Pacific sperm and minke whales. Endorsing these comments, the UK noted that the Japanese authorities now seem to acknowledge that not only are many sources of whale meat contaminated, but that many cetacean species that find their way onto the Japanese market labelled as whale meat are also highly contaminated. The UK further noted that a veterinary institute in Norway has advised that North Atlantic minke whale blubber contains such high levels of contaminants that consumption should not exceed 10g/week for adults, while pregnant women and children should not consume blubber at all. A recommendation to reduce consumption of minke whale meat had also been made because of mercury levels. Germany and Mexico believed that environmental contamination was one of the issues that should be covered by the new Conservation Committee.

Norway considered the UK's remarks to be misleading in the context given. It acknowledged that marine products contain some mercury and that in certain contexts, these have been a concern for Norwegian health authorities. However, it reported that mercury levels in the red meat of minke whales caught in the North Atlantic is of a similar order of magnitude as that in fish species in the region and lower than in tuna and other fish species. It acknowledged that minke whale blubber had been put on a list of food products that pregnant women should not eat but noted that the same list includes many other fish species and marine products.

Regarding SOCER, Austria drew attention to this year's report, indicating that comments would be welcomed. It reported that the focus of next year's report would be the Pacific Ocean.

Austria, the UK, Italy, Argentina, Mexico and Monaco noted the importance of the proposed habitat degradation workshop and hoped that it could be held. The UK suggested that if funds could not be found this year, then they should be made available next year. Italy noted that the University of Sienna had expressed interest in hosting the workshop and that some funding had already been secured through voluntary contributions. Austria called on Contracting Governments to provide voluntary funding to enable the workshop to go ahead.

The Commission noted the Scientific Committee's report and endorsed its recommendations.

#### 13.4 Reports from Contracting Governments

There were no reports from Contracting Governments on national and regional efforts to monitor and address the impacts of environmental change on cetaceans and other marine mammals.

<sup>27</sup> *J. Cetacean Res. Manage.* 5 (Suppl.):73

### 13.5 Health issues

#### 13.5.1 Commission discussions and action arising

Referring to Resolution 1999-4<sup>28</sup> on health effects from the consumption of cetaceans, Monaco requested information on the status of the request to the Scientific Committee made by the Resolution to 'receive, review and collate data on contaminant burdens in cetaceans and forward these as appropriate to the WHO competent national authorities, and to report on this matter to the Commission'.

The Scientific Committee Chair reported that the Committee addressed this issue at its meetings in 2001 and 2002<sup>29</sup>. He explained that a paper prepared for the Committee on WHO's requirements for submission of data regarding contaminants in food had revealed that the required standards for data quality and control were considerably higher than those typically employed in the fish and wildlife community, given the use to which they are put by WHO. He noted that although the Committee had requested papers to be presented on contaminants, none had been received. He believed that the submission of data by the Scientific Committee to WHO is unlikely, because of their extremely high requirements, but did not consider this a reason for information on contaminant levels in a format more typical of peer-reviewed literature in fisheries and wildlife to not be made available.

Monaco considered the response from the Scientific Committee Chair to be a signal that collaboration between IWC and WHO should be reactivated and strengthened.

## 14. CO-OPERATION WITH OTHER ORGANISATIONS

### 14.1 Report of the Scientific Committee<sup>30</sup>

The Scientific Committee received reports of its co-operation with CMS (Convention on the Conservation of Migratory Species), ASCOBANS (Agreement on Small Cetaceans of the Baltic and North Seas), ACCOBAMS (Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area), ICES (International Council for the Exploration of the Sea), IATTC (Inter-American Tropical Tuna Commission); ICCAT (International Commission for the Conservation of Atlantic Tuna), CCAMLR (Convention for the Conservation of Antarctic Marine Living Resources), Southern Ocean GLOBEC, NAMMCO (North Atlantic Marine Mammal Commission), COFI (FAO – Committee on Fisheries), CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna); PICES (North Pacific Marine Science Organisation); and ECCO (Eastern Caribbean Cetacean Commission).

The Scientific Committee Chair stressed the importance of its co-operation with other organisations and considered them to be of tremendous benefit to IWC. He noted that he would like to see co-operation expanded where appropriate.

### 14.2 Commission discussions and action arising

The Commission noted the report from the Scientific Committee.

Noting the Memorandum of Understanding agreed between the CMS and IWC Secretariats in July 2000<sup>31</sup>, the representative from CMS highlighted areas of potential synergy between the two organisations, mentioning in particular bycatch and environmental impact and migratory species. He noted the longstanding interaction at a scientific level between the two organisations and the key role of several scientists. He hoped that the good co-operation could continue. Monaco reported that at the last Conference of the Parties to CMS, fin, sei, and sperm whales were added to Appendix I and II and Antarctic minke, Bryde's and the pygmy right whales to Appendix II. Monaco asked that these listings be acknowledged in the Chair's Report. Regarding ACCOBAMS, Monaco hoped that there could be further co-operation with IWC.

Noting that the report from the Chair of the Commission on the Conference of Parties to CITES held in November 2002 had been included in the documentation on co-operation with other organisations (IWC/55/8), Norway suggested that the Chair's report to CITES regarding progress on the RMS should also have been included. The Chair reminded the Commission that his report to CITES had been circulated to all Commissioners in advance of the November meeting. Dominica criticised the Chair for reporting to CITES on his own behalf rather than on the behalf of the Commission. The UK noted however that this would have required the Commission to endorse the report prior to submission to CITES and that the Chair had only acted as had been agreed at the 5<sup>th</sup> Special Meeting of the Commission on 14 October 2002.

Australia drew attention to the opening statement from the IUCN Secretariat that it believed provided highly specific and tendentious advice to the Commission on how it should manage progress on the RMS. Australia considered it unusual for the Secretariat of one international organisation to give policy advice to another. While Norway wished that this situation was the case, it noted that the IUCN has a record of providing this kind of advice and especially in relation to CITES.

## 15. OTHER SCIENTIFIC COMMITTEE ACTIVITIES, ITS FUTURE WORK PLAN AND ADOPTION OF THE SCIENTIFIC COMMITTEE REPORT

### 15.1 Small cetaceans

#### 15.1.1 Report of the Scientific Committee

Despite disagreement within the Commission over the management responsibilities of the IWC with respect to small cetaceans, it has been agreed that the Scientific Committee can study and provide advice on them. As part of this programme, the Committee has reviewed the biology and status of a number of species and carried out major reviews of significant directed and incidental catches of small cetaceans.

In 2001, the Government of Japan had indicated that it would no longer co-operate with the Committee on small cetacean related matters. In 2002, the Committee referred to the great value of the information provided by the

<sup>28</sup> *Rep. int. Whal. Commn* 1999:53

<sup>29</sup> *Rep. int. Whal. Commn* 2000:41-42 and 2001:32-33

<sup>30</sup> For details of the Scientific Committee's deliberation on this Item see *J. Cetacean Res. Manage.* 6 (Suppl.)

<sup>31</sup> *Ann. Rep. int. Whaling Comm. 2000:58-59*

Government of Japan on the status of small cetaceans in previous years and respectfully requested that the Government of Japan reconsider its position on this matter and resume the valuable contribution of Japanese scientists to its work on small cetaceans. Unfortunately, this did not happen in 2003.

At the 2003 meeting, the Committee considered the status of small cetaceans in the Black Sea. The species of concern are the harbour porpoise (*Phocoena phocoena*), the short-beaked common dolphin (*Delphinus delphis*) and the common bottlenose dolphin (*Tursiops truncatus*). All three are found in the Turkish Straits System but only harbour porpoises and bottlenose dolphins are present in the Azov Sea. There is relatively little information on current distribution. With respect to stock structure, it was agreed that the Black Sea harbour porpoises and bottlenose dolphins comprise separate stocks for management and conservation purposes. A similar but provisional conclusion was reached for common dolphins. A number of research recommendations to improve understanding of distribution and stock structure within the region were made. Similarly, the Committee recommended that systematic abundance surveys are required for all three species throughout their range. The Black Sea is one of the most highly modified marine ecosystems in the world and the habitats of cetaceans in this basin have been degraded by numerous human activities. However, for most of these, the effects on cetaceans in the region are unknown and the Committee recommended research into these.

Uncontrolled directed takes were the primary threat to cetaceans in the Black Sea until a ban was imposed in 1983. There is no evidence of continued directed takes. All three species are taken as bycatch, but incidental takes of harbour porpoises are of greatest concern. Illegal, unreported or unregulated (IUU) fisheries are widespread in the Black Sea and may have a significant bycatch. Further quantitative elaboration of bycatches for all species is important, particularly for the bottom-set gillnet fisheries for turbot. After the ban on directed harvest, removals of live bottlenose dolphins has continued and in view of the many other threats faced by this species in the Black Sea, it is recommended that any removals of live cetaceans be preceded by a rigorous assessment of the impacts of such removals.

In conclusion, the Committee was unable to fully evaluate the status of small cetaceans in the Black Sea due to a lack of information. It concluded, however, that all three species probably declined dramatically in the 20<sup>th</sup> century as a result of large directed catches; fisheries bycatch and habitat degradation pose the most significant current threats to these species.

The Committee also reviewed progress on previous recommendations it had made, particularly those concerning the critically endangered baiji and vaquita. The Committee received some information from China and welcomed the initiatives being taken. However, it reiterated that the prospects for the baiji remain extremely poor. The Committee was informed of some further research that suggested the vaquita's range may have contracted – fishing and bycatches continue. It reiterated its grave concern over the survival of this species. It noted that CIRVA (International Committee for the Recovery of the Vaquita) will meet later in 2003/4 and looked forward to receiving an update of progress.

The Committee reiterated its support for the ASCOBANS recovery plan for harbour porpoises in the Baltic which it hoped would be adopted and implemented by the ASCOBANS parties.

The Committee also reviewed progress on work on the reduction of bycatches in fishing gear. It expressed concern over the number of animals being taken in pelagic trawl fisheries in western Europe and recommended that independent observer programmes be established to document the extent of bycatches in pelagic trawl fisheries of all nations in this region where such programmes do not already exist.

The Committee repeated its concern over the catches and quotas for some stocks of white whales and narwhals, particularly in Greenland, east Hudson Bay and the Russian Arctic. Finally, the Committee repeated previous requests for all Governments to submit relevant information on direct and incidental catches of small cetaceans in their national progress reports and for improved information on stock identity and abundance.

Priority next year will be given to addressing the status of the franciscana (*Pontoporia blainvillei*).

#### 15.1.2 Commission discussions and action arising

Several countries welcomed the Scientific Committee's report and shared its concerns. The UK drew particular attention to the status of Dall's porpoise and white whales. It noted that Japan is reportedly taking 16-18,000 Dall's porpoise a year (a level that it considered must be beyond sustainable yield) and that it has consistently ignored requests for information on stock status and requests from the Commission for takes to stop. The UK also believed that the takes of white whales by the Russian Federation and Greenland also appear to be beyond a sustainable yield, as recently acknowledged by NAMMCO. The UK considered that action is now required to prevent further depletion of these endangered stocks. New Zealand also expressed concern about the status of narwhals and urged Greenland to adopt appropriate legislation to manage its small cetacean hunts, including the setting of quotas based on sound science, and to address its high struck and lost rates and under-reporting. It noted that it would like to see a report from Greenland on these issues at next year's meeting. Finland, Switzerland, Germany, Australia, the USA, Sweden and Mexico associated themselves with earlier remarks. Referring to its comment during discussions on aboriginal subsistence whaling (see Section 7.3.2.3), Australia again expressed its concern regarding the overall management of whaling in Greenland and also asked whether Denmark could provide a comprehensive report next year on the issues raised. Austria considered that if the Scientific Committees of NAMMCO and IWC are expressing similar concerns, then action should surely be taken.

The USA noted the emphasis of the Committee this year on small cetaceans in the Black Sea and noted the recommendations on bycatch issues. Sweden reported that it had started to implement action to reduce small cetacean bycatch to less than 1% of the population per year, and urged other Contracting Governments to take similar action. Mexico commended the hard work of the Scientific Committee and encouraged the sharing of information.

Although it considers small cetaceans to be outside the Terms of Reference of the IWC, the Russian Federation noted that it is prepared to provide information on a

bilateral basis and to appropriate fora. It reported that it sets quotas for the white whale harvest that are designed to satisfy the needs of indigenous peoples, adding that some animals are taken for dolphinarium. It stressed that takes are in the dozens, not hundreds. Denmark also referred to its position with respect to IWC competency over small cetaceans and added that it would not be providing information to IWC.

The Commission noted the Scientific Committee report and endorsed its recommendations.

## 15.2 Other activities

### 15.2.1 Report of the Scientific Committee

#### STOCK IDENTITY

Of general concern to the assessment of any cetaceans is the question of stock identity. Examination of this concept in the context of management plays an important role in much of the Committee's work, whether in the context of the RMP, AWMP or general conservation and management. In recognition of this, the Committee has established a Working Group to review theoretical and practical aspects of the stock concept in a management context. The Committee has noted that it is important, in any application of stock structure methods, to examine the sensitivity of conclusions to different *a priori* decisions about the definition of initial units, and as to which population structure hypotheses to examine.

A specialist workshop to examine the use of simulation testing to assess the performance of methods to identify population structure was held in January 2003 and discussed at the Berlin meeting. The workshop developed a suitable simulation framework to allow evaluation of genetic methods used in inferring population structure both in general terms (the issue is of great relevance to conservation and management outside the IWC) and from a specifically IWC viewpoint (particularly in an RMP/AWMP context).

It was recognised that such a complex project must proceed in an iterative fashion and the Workshop concentrated on specifying the various modular tasks needed for Phase I of the process (*c.f.* *Initial Exploration Trials* in the AWMP process), for which some results might be expected within a year, while also identifying the types of scenarios that would need to be covered in Phase II and beyond. Funding has been provided that will allow Phase I of the TOSSM project (Testing Of Spatial Structure Models) to be completed. The most challenging module is the development and validation of a program to simulate realistic genetic datasets. It is hoped that the first sets of simulated data will become available in February or March 2004. If so, some results for at least some methods may be available for consideration at next year's Scientific Committee meeting

#### DNA TESTING

This item is discussed in response to Commission Resolution 1999-8.<sup>32</sup> Discussion centred on two issues. The first concerned progress on a new method for species identification called SINE (short interspersed repetitive element) insertion analysis. The Committee agreed that it represents an attractive method for whale species identification, which should be especially useful for management and conservation.

The second concerned further information on the implementation of 'DNA Surveillance', a web-based program for molecular genetic identification of cetaceans and cetacean products derived from strandings, fisheries bycatch, regulated exploitation and illegal hunting.

#### ACCESS TO IWC/SOWER BIOPSY SAMPLES

The Committee agreed to a new protocol the safe archiving of the samples and to a streamlined policy for access to them. All IWC portions of the SOWER genetic samples will now be housed in the Genetics Archives at the Southwest Fisheries Science Centre (SWFSC) in the USA on behalf of the IWC. All existing IWC/SOWER genetic samples will be shipped to SWFSC after obtaining the necessary permits (CITES). SWFSC has an existing CITES import permit in place for these samples. From now, after future SOWER cruises, the IWC portions of all genetic samples will be shipped as a unit to SWFSC.

#### WORKING METHODS OF THE COMMITTEE

The question of data availability is complex and sensitive. A balance must be struck between the needs of the Committee and the rights of the scientists who have invested considerable time and effort in collecting the data. To reach agreement on this has proved difficult in the past. A major achievement at the 2003 meeting was that consensus was reached on a protocol for data availability. The agreed protocol was based on the principles that:

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

#### PUBLICATIONS

The year 2002 was another productive year with respect to the IWC's scientific publications.

The website now includes a downloadable file containing almost 6,000 references to documents that have been presented to the Committee since 1969. The file lists all of the documents by meeting and includes information on whether and where they have been published. The Committee reiterated the importance of Committee members urging their respective institutes and colleagues to subscribe to the Journal and to submit high quality papers to it. The success of the Journal will be greatly increased as it becomes established in more institutional libraries.

The Committee stressed the vital contribution the Journal makes to the work of the Committee and to the wider issues of the management and conservation of whales.

### 15.2.2 Commission discussions and action arising

Regarding DNA testing and surveillance, New Zealand recalled that it has been a pioneer in the use of DNA techniques in stock identification and management and commended the Auckland University website mentioned in the Committee's report to Contracting Governments. It regretted that Norway and Japan are not making their DNA data available and hoped that they would be more

<sup>32</sup> *Ann. Rep. Int. Whaling Comm. 1999:55*



forthcoming in future. The UK associated itself with these remarks. It commended the new DNA extraction method and PCR primers used for species identification of whale products reviewed by the Scientific Committee, noting that the techniques are considerably improved to the extent that products from cetaceans have been detected in pet food.

In response to New Zealand, Norway reported that it is providing information on its DNA register (technical developments and samples included in it) to the Scientific Committee but that the register itself is not yet available via the internet. It noted that at the 11th Conference of the Parties of CITES in April 2000, it had made efforts to enter into a co-operative arrangement with CITES to facilitate transparency of its DNA register under CITES. As this arrangement was contingent upon downlisting of minke whales from Appendix I to II, the arrangement was not pursued. However, Norway indicated that all applications for testing and comparing the registry would be dealt with in an orderly way and that interested scientists could visit Bergen to inspect and discuss the registry with Norwegian scientists.

With respect to the Scientific Committee's recommendation on data availability, the USA endorsed this recommendation, indicating that it would abide with it to the best of its ability and called on other Contracting Governments to do the same. It noted that this had been a difficult issue for the Scientific Committee but that it had been resolved by consensus.

Referring to Item 21 of the Scientific Committee report concerning funding requirements for 2003/2004, and in particular to the paragraph concerning Invited Participants (IPs), Mexico considered that it is time for the Committee and the Commission to review the way in which IPs are selected and funded. It noted that there are a number of funded IPs from countries and institutions that are well-able to pay costs associated with attendance at Scientific Committee meetings, while other IPs are obliged to find the costs themselves. Mexico urged the Commission to request the Committee to review this issue and to take its concerns into account when selecting and funding IPs next year. It also believed that the Scientific Committee should look at the possibility of introducing some 'new blood'. The Russian Federation, Monaco and Brazil supported these remarks. The Russian Federation re-iterated its comment made during the F&A Committee meeting regarding IPs and the Scientific Committee's work on addressing the issue of falsification of past catch data from the USSR (see section 21.2). Monaco believed that the funding of scientists to attend the Scientific Committee, particularly from developing countries, is important and believed that to increase the independence of the Committee, efforts should perhaps be made to increase the ratio of IPs. It was aware that this would require new procedures, but indicated that advice on this could be sought from those organisations already having experience. Monaco requested the view of the Scientific Committee Chair on this matter.

In response to Monaco, the Scientific Committee Chair reported that considerable attention had been given to the issue of IPs at this year's meeting. He noted that this was partly because of the reduced funds available for IWC/55 (i.e. from around £30,000 to £20,000). The Chair informed the meeting that under the Committee's Rules of Procedure, the convenors of each sub-committee are able to submit proposals for IPs, with individuals being ranked in importance for the work of that particular sub-committee.

The proposals from each sub-committee are then reviewed and a final list of IPs drawn up. The Chair reported that this year it was possible to fund 16 IPs through the general fund and a further 7 via the Small Cetaceans Fund. He noted that there had been 11 self-funded IPs, although 10 IPs had not been able to attend because of the absence of funding. The Chair hoped that the IP budget would be restored for IWC/56 which would help to address some of the concerns raised by Commissioners and enable more IPs to attend. He also reported that the Scientific Committee is trying to minimise the number of intersessional meetings in favour of meetings just prior to the Annual Meeting. This was one way to try to increase the participation of scientists from developing countries in the Committee's work. Another might be to create a separate fund.

The Commission noted the Scientific Committee's report and endorsed its recommendations.

### 15.3 Scientific Committee future work plan

#### 15.3.1 Report of the Scientific Committee

The Chair of the Scientific Committee described the work plan drawn up by the Convenors, with the agreement of the Scientific Committee, after the close of the meeting. The work plan takes account of: (1) priority items agreed by the Committee last year and endorsed by the Commission and, within them the highest priority items agreed by the Committee on the basis of sub-committee discussions; (2) general plenary discussions on this item and in particular the need to reduce the Committee's workload; and (3) budget discussions in the full Committee. It was agreed to divide the work among 13 sub-committees/working groups as proposed below. The Chair noted that this structure would provide the basis for a draft agenda for the 2004 meeting and a framework for determining invited participants. He stressed that items of lower priority of the agenda of sub-committees would only be discussed if time allowed.

##### 15.3.1.1 RMP

As last year, this Sub-committee will concentrate on general issues as well as preparations for Implementation. The priority topics will be:

- (1) review progress on adjusting convergence criteria for the CATCHLIMIT program;
- (2) review the *Implementation* process in the light of the experience with western North Pacific common minke whales;
- (3) review the level of information required for *pre-implementation assessments* and for proceeding to an *Implementation*;
- (4) work towards implementing the RMP for western North Pacific Bryde's whale.
- (5) comment on whether there is sufficient information on North Atlantic fin whales to begin a *pre-implementation assessment*.

##### 15.3.1.2 AWMP

The Standing Working Group will hold an intersessional workshop to finalise robustness trials for the eastern North Pacific gray whale and consider results from *Evaluation Trials*. At the Annual Meeting it will:

- (1) work towards recommending a gray whale *SLA*;

- (2) review of results from the Greenlandic Research Programme and make recommendations;
- (3) review progress on development of potential *SLA* for Greenland fisheries;
- (4) undertake annual review of catch data and management advice for minke and fin whales off Greenland;
- (5) undertake annual review of catch data and management advice for humpback whales off St Vincent and The Grenadines.

#### 15.3.1.3 BOWHEAD, RIGHT AND GRAY WHALES

At the Annual meeting this sub-committee will:

- (1) complete in-depth assessment of BCB bowhead whales;
- (2) undertake annual review of catch data and management advice for North Pacific Eastern gray whale;
- (3) undertake annual review of catch data and management advice for BCB bowhead whale;

if there is time, it will:

- (4) review new information on small stocks of bowhead, right, and gray whales.

#### 15.3.1.4 IN-DEPTH ASSESSMENT

This sub-committee will establish an *ad hoc* working group during next year's meeting to undertake an In-depth Assessment of western North Pacific common minke whales providing the intersessional steering group determines sufficient progress has been made. In addition, it will:

- (1) consider issues related to the abundance estimation of Antarctic minke whales;
- (2) consider options for future SOWER cruises.

#### 15.3.1.5 BYCATCHES AND OTHER ANTHROPOGENIC REMOVALS

This sub-committee will:

- (1) further review methods to estimate bycatch based on fisheries data and observer programmes;
- (2) further review methods to estimate bycatch based on genetic data, particularly with respect to the proposed workshop;
- (3) review information and methods on estimates of cetacean mortality caused by vessel strikes;
- (4) review information and methods on estimates of cetacean mortality caused by other human activities.

#### 15.3.1.6 ENVIRONMENTAL CONCERNS

Suggested priority topics for this Sub-committee will be developed intersessionally by a working group. The working group will consider input from the Chair following the Commission meetings, as well as input from convenors. The primary objective of this exercise will be to better integrate the mission of the Standing Working Group on Environmental concerns with the priority topics of the other sub-committees. The final decision will be taken by the Chair in consultation with the new convenor.

#### 15.3.1.7 WHALEWATCHING

]The Standing Working Group will:

- (1) review report from intersessional workshop on Whalewatching in South Africa – although this is not being convened by the Committee, it will nonetheless provide an opportunity for furthering the objectives of this standing working group;
- (2) consider further development of the Data Recording System (DRS);
- (3) continue review of whalewatching guidelines and regulations.

If there is time, it will:

- (4) review risk to cetaceans of high speed whalewatching boats;
- (5) review potential impacts of 'swim-with' programs on populations of cetaceans.

#### 15.3.1.8 SMALL CETACEANS

This Standing sub-committee will:

- (1) review of status of franciscana;
- (2) plan and convene a one day workshop on depredation of fisheries by small cetaceans in the Mediterranean region – if possible, this workshop will be held the day prior to the start of the Committee meeting;
- (3) review progress on previous recommendations;
- (4) review incidental catches and takes of small cetaceans by country.

#### 15.3.1.9 STOCK DEFINITION

This Working Group will:

- (1) review progress on the TOSSM (Testing Of Spatial Structure Models) project;
- (2) continue review of statistical and genetic issues related to population structure and unit to conserve;
- (3) consider application of non-genetic data to stock identification.

#### 15.3.1.10 SOUTHERN HEMISPHERE WHALES OTHER THAN ANTARCTIC MINKE WHALES

This sub-committee will:

- (1) complete in-depth assessment of Southern Hemisphere humpback whales;
- (2) investigate data from illegal Soviet catches;
- (3) investigate use of abundance estimates from SOWER and JARPA in population dynamics models.

#### 15.3.1.11 SANCTUARIES

A pre-meeting workshop will be convened to prepare recommendations regarding the review of the Southern Ocean Sanctuary. This Working Group will:

- (1) complete review of SOS;

If there is time it will also:

- (2) review process to facilitate review of future proposals and future sanctuary reviews.

**15.3.1.12 SCIENTIFIC PERMITS**

This Standing Working Group will:

- (1) review proposals to facilitate the review process of the Committee;
- (2) review research results from existing permits;
- (3) review plans for new and continuing permit proposals.

**15.3.1.13 DNA**

This Working Group will:

- (1) review genetic methods for species, stock, and individual identification;
- (2) collect and archive tissue samples from catches and bycatch;
- (3) reference databases and standards for diagnostic DNA registries.

**15.3.2 Commission discussions and action arising**

The Commission noted the proposed work plan.

**15.4 Adoption of the Report**

The Commission adopted the Scientific Committee report and its recommendations, including the future work plan.

**16. CATCHES BY NON-MEMBER NATIONS**

Noting that one bowhead whale had been taken from the Canadian stock by Inuit hunters in August 2002, Austria expressed disappointment with the continued take by Canada from this endangered stock. It also drew attention to differences in the description of the take between the Scientific Committee report and the homepage of the Canadian indigenous peoples. In the former it was indicated that a single strike was used, whereas in the latter it was reported that when a bomb lance proved unsuccessful a traditional bowhead harpoon was used. New Zealand, Spain and Australia associated themselves with Austria's remarks. The Scientific Committee Chair recognised the imprecise language used in the Committee report and indicated that it would be clarified.

**17. INFRACTIONS, 2002 SEASON****17.1 Report of the Infractions Sub-committee**

The Infractions Sub-committee met on 10 June 2003 with delegates from 26 Contracting Governments. The Sub-committee's Chair, Sung Kwon Soh (Korea), summarised the group's discussions. The full report is given in Annex H.

As in previous years, despite differences of opinion as to whether the item concerning stockpiles of whale products and trade questions is within the scope of the Convention, the Sub-committee agreed that an exchange of views was useful.

**17.1.1 Infractions reports from Contracting Governments**

Infractions reports for 2002 were received from Denmark, the USA, the Russian Federation and the Republic of Korea. Disappointment was expressed by one government that St. Vincent and The Grenadines was not present at the

sub-committee meeting<sup>33</sup>. Only Denmark and the Republic of Korea reported infractions.

Denmark (Greenland) reported that an adult humpback whale and a humpback whale calf were wounded in separate rifle hunts. In both cases neither whale could be rescued and were killed on the authorisation of the Department of Fisheries, Hunting and Agriculture.

The Republic of Korea reported an illegal deliberate catch of one minke whale by its nationals fishing from a vessel with a longline fishery permit. The whale was killed by a harpoon. The Captain was fined 8 million Korean won (about 7,000 US\$) and the vessel owner had his fishing license revoked permanently. The meat was confiscated and sold publicly by the police. The Government stated that it prohibited whale takes and strives continuously to improve measures for the conservation and management of whales in its jurisdictional waters, in accordance with the ICRW and IWC's decisions.

Referring to reports of killer whales being taken in Greenland, several countries expressed the view that a combination of Schedule paragraph 10(d), that forbids the taking of killer whales by factory ships, and paragraph 10(e), that refers to the ban on commercial whaling, made the Greenlandic catches an infraction. Denmark noted that the animals were not taken by a factory ship and in any event are small cetaceans and thus outside the competence of the IWC and consequently takes of this species are not required to be reported as infractions under the Convention.<sup>34</sup>

While recognising the different views over competency with respect to small cetaceans, several governments also expressed concern regarding a kill of northern bottlenose whales during 2002 in the Faroe Islands as reported in a letter to the UK from the Faroese authorities. These governments noted that this species is listed as a Protection Stock in Schedule Table 3, and is therefore covered by the moratorium. Denmark was not able to reply in detail since it did not have the letter in question and no representative from the Faroes was present. However, it recalled that northern bottlenose whales frequently strand in certain bays in the Faroes and that such animals are utilised if possible.

Several countries expressed concern that arrangements allowing bycaught animals to be killed and to be landed and sold (e.g. new legislation in Japan), could provide an incentive for killing to occur rather than for attempts to be made to free trapped animals. One country believed there should be a clear distinction between an accidental bycatch and the deliberate killing of whales trapped in fishing gear. Attention was drawn to Resolution 2001-4<sup>35</sup> whose purpose was to ensure that those responsible for bycatch should not benefit from it.

Other countries considered that non-deliberate killing, such as bycatches do not constitute an infraction and are thus outside the terms of reference of the Sub-committee. Rather they are an inevitable occurrence in normal fishing operations. These countries considered that what happens to a bycaught animal after its death is the responsibility of national governments – some preferred not to waste the animal whereas others prohibited its use.

<sup>33</sup> St. Vincent and The Grenadines submitted its infractions report after the Sub-committee met. No infractions were reported.

<sup>34</sup> This general issue had also been discussed last year (*Ann. Rep. Int. Whaling Comm.* 2002:91)

<sup>35</sup> *Ann. Rep. Int. Whaling Comm.* 2001:55-56

The Sub-committee Chair had noted that the issue of whether bycatch comprise infractions had been fully discussed last year and the exchange of views recorded<sup>36</sup>.

#### 17.1.2 Surveillance of whaling operations

Information submitted by the USA and the Russian Federation indicated that 100% of their catches were under direct national inspection. Denmark (Greenland) reported on quota monitoring.

#### 17.1.3 Checklist of information required or requested under section VI of the Schedule

The following information was provided:

*Denmark:* Information on date, position, species, length, sex, whether a female is lactating and whether a foetus is present is collected for between 76-100% of the catch, depending on the item. Information on killing methods and struck and lost animals is also collected.

*USA:* Information on date, species, position, length, sex, killing method and numbers struck and lost is collected for between 90-100% of the catch depending on the item. Other biological information is recorded for about 63% of animals.

*Russian Federation:* Information provided to the Scientific Committee shows that information on date, species, position, length, sex, whether lactating and hunting methods are collected.

*Norway:* the required information has been submitted to the Secretariat as noted in the Scientific Committee report.

#### 17.1.4 Submission of national laws and regulations

A summary of national legislation supplied to the Commission was prepared by the Secretariat. One country observed that the table contained no entry from St. Vincent and the Grenadines since 1986 and noted that at last year's meetings of the Infractions Sub-committee and the Commission, St. Vincent and the Grenadines had assured the sub-committee that they would be enacting new legislation. It hoped that St. Vincent and the Grenadines would not undertake whaling operations until the legislation is in place.

#### 17.1.5 Other matters

The Secretariat had received no reports from Contracting Governments and no comments were made during the meeting.

### 17.2 Commission discussions and action arising

The UK congratulated the new Sub-committee Chair Sung Kwon Soh for his summary and for his handling of the Sub-committee meeting. It expressed its continued concern regarding the issue of bycatch. While in general it does not consider bycatch an infraction, this is not the case for the indiscriminate killing of animals caught in nets. The UK believed that the ability to commercialise bycatch might act as an incentive not to take measures to limit it. It agreed that utilisation of whales found dead in nets is sensible, but questioned whether such animals should be sold. Australia referred to the recent Japanese legislation allowing the deliberate killing of whales caught in nets and believed these should be counted as infractions. It was also of the view that IWC had competency over killer whales since Schedule paragraph 10(d) regarding the moratorium on the use of factory ships specifically mentions killer whales.

Given paragraph 10(d), Australia considered that paragraph 10(e) also applied. Germany agreed with the UK and Australia.

Norway repeated its remark made in the Sub-committee, i.e. that it held opposite views to the UK, Australia and Germany regarding bycatch and infractions. Iceland and the Republic of Korea made similar comments. The Republic of Korea considered that some level of bycatch is inevitable, mentioned that it has a mandatory reporting system and that this information is reported to the Scientific Committee. Denmark again noted that it considers the management of small cetaceans to be outside the competence of IWC.

Japan stressed that under the Convention and the Schedule, it is not required to identify bycaught animals as infractions. It did not consider the deliberate killing of bycaught animals to be an infraction. Australia did not doubt that the killing of bycaught animals is legal in Japan but believed it to be an infraction under IWC rules. As it did in the Sub-committee, Japan noted that if commercial utilisation is to be discussed, the sale of items at Auckland international airport in New Zealand made by Maori tribes from whale bones and teeth should also be considered in this context. It welcomed the utilisation of whales in this way. In response, New Zealand reported that under its 1978 Marine Mammal Protection Act, the sale of such items is illegal and that action had been taken against the shop in question. It further noted however, that trading of products made from whale bone prior to 1978 is entirely legal and that under the Marine Mammal Protection Act, a number of Maori tribes have entered into protocol arrangements with the Department of Conservation for the use of whale bone for their own cultural purposes.

Austria commented that Table 1 of the Sub-committee's report regarding details of national legislation provided to IWC needed to be updated.

The UK thanked Denmark/Faroe Islands for the information they had now provided bilaterally on the killing of six bottlenose whales as referred to in the Sub-committee.

The Commission took note of and adopted the Sub-committee's report.

## 18. LEGAL ADVICE IN RELATION TO THE IWC

### 18.1 Proposal regarding legal advice in relation to the IWC

As requested by the Chair of the Commission at the 5<sup>th</sup> Special Meeting of the Commission in Cambridge in October 2002, the Netherlands had developed, in consultation with a number of Contracting Governments, some ideas on how the Commission might better address any legal issues it may face in the future.

In introducing its proposals, the Netherlands noted that they focused on a process for dealing with future legal issues that could contribute to confidence-building between IWC members. It stressed that the proposals were without prejudice to decisions already made. The Netherlands considered that the legal aspects addressed by its proposed process should be limited to institutional issues like adherence to the Convention, voting and responsibility of IWC under the ICRW so as to separate legal issues from policy issues, although it recognised that these can never be fully distinguished.

<sup>36</sup> *Ann. Rep. Int. Whaling Comm.* 2002:92

The Netherlands suggested that the IWC should explore the process on how legal advice could be sought, where appropriate. As a first step, it proposed that the Secretariat be requested to explore:

- (a) how other Conventions deal with legal issues; explore if other Conventions use external advice, internal advice (like Convention Secretariats) or other person/bodies that have 'authority' on this issue;
- (b) the sort of legal issues other Conventions have dealt with;
- (c) the type/range of legal issues that the Commission may face. The exploration should include a consideration of how urgently possible legal issues in IWC need to be resolved (at meetings themselves or not time-critical).

The Netherlands recommended that the work on the law of treaties by the United Nations International Law Commission be taken into consideration.

With respect to possible options that could be considered in the future to deal with legal issues, the Netherlands mentioned the following as examples:

- (1) selection of an external legal advisor, for example by:
  - a) contracting out legal services with a law firm, b) using a panel of three international renowned judges or lawyers, proposed by Contracting Governments; c) adoption of other legal advisory group of lawyers of other composition;
- (2) Establishing a legal committee or working group within IWC which could be: a) an ad-hoc legal advisory committee on a certain issue, made up of legal advisors of interested parties; b) a standing legal advisory committee.

## 18.2 Commission discussions and action arising

A number of countries commended the initiative of the Netherlands.

The USA believed that occasions often arise at meetings when the Chair and/or Secretary require legal advice and considered the proposals by the Netherlands to be a good starting point.

New Zealand welcomed the USA's comments and noted that modern practice is to include comprehensive dispute mechanisms in major international instruments. While it strongly supported such mechanisms, it believed that the development of a dispute settlement mechanism for IWC to be a major undertaking that would require very careful drafting. New Zealand considered the Netherlands' proposal to be an alternative approach and indicated that it could support the initial steps suggested. It did, however, reserve its general legal position on the large international law issues involved.

Sweden believed that legal issues are not easy to handle, but also supported the Netherlands' proposed first step. It was, however, reluctant to involve external advisors at present, but indicated that this could be considered as a possible next step. Monaco agreed with these remarks.

Denmark believed it would be useful to get some background information, but did not believe that the Commission should relinquish its decision-making powers to another body. Rather it should make its own political decisions. It supported proposed first steps (a) and (b) but had some reservations regarding (c).

Norway agreed that from time to time discussions within the Commission give rise to some difficult legal problems. However, it felt it presumptuous to assume that Contracting Governments have problems interpreting their obligations under the Convention and noted that it would not recognise an external body in that regard. Norway reminded the meeting that Contracting Governments can include legal experts on their delegations if they so wish and encouraged them to seek such advice. Regarding the proposed first steps, like Denmark it could agree with collection of information as suggested under (a) and (b) but did not believe the Secretariat has the competency to address item (c). It believed that this would need to be done by Commissioners and was willing to explore how to move forward on this issue through the establishment of an ad hoc group under the Convention.

Japan believed that IWC decisions should be based on the will of Contracting Governments. It therefore would not accept advice from external law firms. Japan did not believe that the work proposed by the Netherlands was needed at present.

The UK understood the concerns that prompted the Netherlands to develop its paper and considered the proposed first steps useful. It did however have sympathy with the comments of Norway and Japan. Australia made similar remarks and supported the comments made by New Zealand. Spain agreed that the Commission has certain gaps in its procedures and welcomed the Netherlands' proposals but cautioned against turning disagreements into legal disputes. Like others, Spain believed that decisions should be made on the will of the Commission. Brazil believed the proposals to be practical. It was however concerned with specific aspects, but could agree to the Secretariat exploring the issues on a very preliminary basis. Iceland supported the remarks of the UK, Brazil and others and considered that the Commission should try to limit itself to how other relevant bodies handle these issues.

In concluding the discussions, the Chair noted that there seemed to be agreement on requesting the Secretariat to tackle items (a) and (b) as proposed by the Netherlands, but not item (c). He suggested that Norway's proposal for an ad hoc group might be revisited at next year's meeting.

## 19. ADMINISTRATIVE MATTERS

Agenda items 19-23 covering administrative and financial matters were considered first by the Finance and Administration (F&A) Committee that met on Wednesday 11 and Friday 13 June 2003 under the chairmanship of Odd Gunnar Skagestad (Norway). Delegates from 35 Contracting Governments attended the meeting. The F&A Committee report is attached as Annex I.

### 19.1 Annual Meeting arrangements and procedures

#### 19.1.1 Verbatim record

CD verbatim recordings of the Commission's meetings rather than typed versions have now been produced since IWC/53 in London in 2001. The F&A Committee was satisfied with the procedure now in place and recommended that the current practice should continue.

The Commission agreed.

#### 19.1.2 Document preparation and distribution

The F&A Committee had reviewed current arrangements for document preparation and distribution. At the 2001 Annual Meeting, the Commission agreed to make non-

confidential meeting documents available via IWC's website. Last year, the Commission agreed: (1) that Contracting Governments should be strongly encouraged to submit meeting documents 6 weeks prior to Annual Meetings; and (2) that extensive documents should be provided no less than 6 weeks before the start of the meeting. The F&A Committee agreed that these arrangements are useful and designed to help all by allowing time for proper consideration of issues prior to a meeting. However, there is still room for improvements, particularly in keeping to submission deadlines.

The Commission noted these views.

#### 19.1.3 Need for a Technical Committee

The Technical Committee (TC) has not met since in IWC/51 in 1999. However, the F&A Committee recommended that the need for the TC be kept under review and remain on the agenda since it may have a role to play when the RMS is completed and catch limits set.

The Commission agreed.

#### 19.1.4 Use of simultaneous translation

##### 19.1.4.1 REPORT OF THE F&A COMMITTEE

During a private meeting of Commissioners at IWC/54 in Shimonoseki in 2002, it was agreed that the use of simultaneous translation to improve communication at Annual Meetings should be explored. Noting the high budgetary implications if the Commission was to provide full simultaneous translation facilities, i.e. both the technical facilities (interpretation booths, ear-pieces, multi-channel listening devices etc.) and the interpreters, it was agreed that the Secretariat should investigate the costs and other implications of the Commission providing only the technical facilities with a view to implementation at IWC/55. Engaging and paying for interpreters would continue to be the responsibility of those delegations requiring them. The Commissioners delegated responsibility for making a final decision on the provision of simultaneous translation facilities for IWC/55 to the Chair in consultation with the Advisory Committee.

After consultation with the Advisory Committee, in view of the relatively high cost of providing the technical facilities required and the relatively low level of interest in using simultaneous translation expressed by Contracting Governments, the Chair of the Commission had decided that further discussions within the Commission were necessary before making such facilities available. Consequently, the existing system of consecutive translation was used for IWC/55.

The F&A Committee Chair reported that the Committee had been asked to review and comment on a document prepared by the Secretary that, *inter alia*, gave cost estimates for providing simultaneous translation. He noted that although a number of countries remained concerned about the costs of providing simultaneous translation, the meeting had agreed that it would be appropriate to explore the matter further through establishing a small Working Group to work intersessionally between now and IWC/56 next year by correspondence. Antigua and Barbuda, the Republic of Guinea and Benin subsequently drafted Terms of Reference for this Working Group for review by the Committee. This had prompted an extensive debate during which the importance of the issue was again recognised by many delegations but tempered in some cases by concerns about the potentially substantial strain on the Commission's budget, especially with regard to document translation and

the costs of providing interpreters and translators. Many ideas were considered to include partial or full translation facilities and different possibilities for how these might be financed. After further discussion, Antigua and Barbuda agreed to work with interested countries to prepare a revised proposal for review by the Commission.

##### 19.1.4.2 COMMISSION DISCUSSIONS AND ACTION ARISING

In the Commission, Antigua and Barbuda presented a revised proposal in the form of a draft Resolution on behalf of the other co-sponsors Benin, Dominica, Grenada, Republic of Guinea, Japan, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines and the Solomon Islands. The draft Resolution proposed that:

- (1) The Commission establish a Working Group aiming at exploring the various implications for the provision of technical components for simultaneous interpretation;
- (2) The Working Group shall consider and make recommendations on how provision of technical components for simultaneous interpretation may be provided at the IWC to accommodate the needs of contracting parties for whom English is a second language;
- (3) The Working Group will be guided by the following Terms of Reference:
  - (a) to review and consider the costs as set out in document IWC/55/F&A 2 and to identify ways in which these costs could be apportioned or reduced;
  - (b) to recommend options and scope for the provision of technical components for simultaneous interpretation;
  - (c) to determine the operations and costs of other international organizations providing such components; and
  - (d) to consult with member states on these issues.
- (4) The Working Group, while open to any IWC contracting party, shall ideally remain small, conduct its work by email correspondence in order to limit expenditures, and submit its recommendations to the F&A Committee prior to the 56<sup>th</sup> Annual Meeting.

The sponsors hoped that the Resolution could be adopted by consensus.

Morocco, the Republic of Guinea and Senegal urged that action be taken on this issue. While cautioning against possible costs involved, France indicated that it would provide French interpreters for IWC/56 and hoped that the host country would be able to provide technical facilities. Monaco thanked the French Government for this kind offer, although the UK expressed the hope that it would not create problems for the Italian Government in arranging for next year's Annual Meeting.

The Resolution was adopted by consensus (see Annex J).

#### 19.1.5 ENB and reporting for plenary meetings of IWC

During the F&A Committee meeting, Germany had introduced a proposal that the Environmental News Bulletin (ENB) be invited to prepare daily reports at future plenary meetings of the IWC. ENB is a private organisation that provides impartial daily reports on meetings in international organisations (e.g. meetings in UN Organisations and in CITES). Germany noted that it

had initially intended to pursue this idea so that ENB could provide reports at IWC/55; ENB had asked to be given the status of a special observer or to be considered as part of the Secretariat to underline its status as an impartial organisation. However, since informal discussions revealed that some members had reservations, Germany had decided to bring the proposal forward to the F&A Committee for consideration.

A number of countries had supported inviting ENB to provide daily reports of Commission plenary meetings believing that they would prepare neutral reports that would serve to increase transparency of IWC. However, other countries, while not disputing that ENB reports on the meetings of other intergovernmental organisations are widely appreciated, had expressed concern about the precedent that would be set by allowing ENB special status beyond that contained in the Rules of Procedure. They considered that the current IWC Rules of Procedure allowing the admittance of NGOs and the press are sufficient. Some concern was also expressed about the possible costs involved, although several delegates confirmed that costs would be borne by sponsors, not by IWC.

The F&A Committee Chair therefore reported that as there was clearly no consensus on giving ENB special status, no recommendations could be made to the Commission on this issue.

The Commission noted the F&A Committee's report. There were no further discussions.

## 19.2 Amendments to the Rules of Procedure and Financial Regulations

### 19.2.1 Secretariat proposals

The Commission endorsed the following amendments to the Rules of Procedure and Financial Regulations as recommended by the F&A Committee (new words or moved text is shown in *bold italics*):

#### OBSERVER FEES

The following revision clarifies that the registration fee is treated as an annual fee for all observers.

##### Revision to Rule of Procedure C.1.(b)

(b) Any international organisation with offices in more than three countries may be represented at meetings of the Commission by an observer;

- if such international organisation has previously attended any meeting of the Commission,

or

- if it submits its request in writing to the Commission 60 days prior to the start of the meeting and the Commission issues an invitation with respect to such request.

*Once an international organisation is accredited, it remains accredited until the Commission decides otherwise.*

(c) The Commission shall levy a registration fee and determine rules of conduct, and may define other conditions for the attendance of *observers accredited in accordance with Rule C.1.(a) and (b)*. The registration fee will be treated as an annual fee covering attendance at the Annual Meeting to which it relates and any other meeting of the Commission or its subsidiary groups as provided in Rule C.2 in the interval before the next Annual Meeting

#### VOTING RIGHTS

The following amendments to Rule of Procedure E.2 and Financial Regulation F.2 clarify the situation with regard to

the link between payment of contributions and voting rights with respect to a 'vote by postal or other means'.

##### Revision to Rule of Procedure E.2

2. (a) The right to vote of representatives of any Contracting Government whose annual payments including any interest due have not been received by the Commission within 3 months of the due date prescribed in Regulation E.2 of the Financial Regulations or by the day before the first day of the next Annual or Special Meeting of the Commission following the due date, *or, in the case of a vote by postal or other means, by the date upon which votes must be received*, whichever *date* occurs first, shall be automatically suspended until payment is received by the Commission, unless the Commission decides otherwise.

(b) The Commissioner of a new Contracting Government shall not exercise the right to vote either at meetings or by postal or other means unless the Commission has received the Government's financial contribution or part contribution for the year prescribed in Financial Regulation E.3.

##### Revision to Financial Regulation F.2

2. If a Contracting Government's annual payments, including any interest due, have not been received by the Commission within 3 months of the due date or by the day before the first day of the next Annual or Special Meeting of the Commission following the due date, *or, in the case of a vote by postal or other means, by the date upon which votes must be received*, whichever *date* occurs first, the right to vote of the Contracting Government concerned shall be suspended as provided under Rule E.2 of the Rules of Procedure.

The Commission also agreed to the F&A Committee's recommendation to add the following footnote to Financial Regulation F to clarify what is meant by 'received by the Commission' with respect to financial contributions:

For the purposes of the Financial Regulations the expression 'received by the Commission' means either (1) that confirmation has been received from the Commission's bankers that the correct amount has been credited to the Commissions' account or (2) that the Secretariat has in its possession cash, a cheque, bankers draft or other valid instrument of the correct value.

#### ARREARS OF CONTRIBUTIONS AND WITHDRAWAL FROM THE CONVENTION

The following amendment to Financial Regulation F.5 clarifies that for a government withdrawing from the Convention, the addition of interest ceases to apply from the date of withdrawal.

##### Revision to Financial Regulation F.5

5. If a Contracting Government's annual payments, including any interest due, have not been received by the Commission in respect of a period of 3 financial years;

- (a) no further annual contribution will be charged;
- (b) interest will continue to be applied annually in accordance with Financial Regulation F.1.;
- (c) the provisions of this Regulation apply to the Contracting Government for as long as the provisions of Financial Regulations F.1. and F.2. remain in effect for that Government;
- (d) the Contracting Government concerned will be entitled to attend meetings on payment of a fee per delegate at the same level as Non-Member Government observers;
- (e) the provisions of this Regulation and of Financial Regulations F.1. and F.2. will cease to have effect for a Contracting Government if it makes a payment of 2 years outstanding contributions and provides an undertaking to pay the balance of arrears and the interest within a further 2 years;
- (f) interest applied to arrears in accordance with this Regulation will accrue indefinitely *except that, if a Government withdraws from the Convention, no further charges shall accrue after the date upon which the withdrawal takes effect.*

### GOVERNMENTS ADHERING TO THE CONVENTION WITH DEBTS FROM A PREVIOUS INVOLVEMENT

The following revision to Financial Regulation F.6 addresses an oversight in amendments made last year, i.e. that Governments can incur financial obligations from observing at Annual Meetings as well as from a previous membership.

#### Revision to Financial Regulation F.6

6. Unless the Commission decides otherwise, a Government which adheres to the Convention without having paid to the Commission *any financial obligations incurred prior to its adherence* shall, with effect from the date of adherence, be subject to all the penalties prescribed by the Rules of Procedure and Financial Regulations relating to arrears of financial contributions and interest thereon. The penalties shall remain in force until the arrears, including any newly-charged interest, have been paid in full.

### DETERMINING THE DURATION OF ANNUAL MEETINGS

The following new Rule of Procedure B.2 provides that before the end of each Annual Meeting, the Commission should decide upon the length of the meeting the following year.

#### New Rule of Procedure B.2

B.2 Before the end of each Annual Meeting, the Commission shall decide on: (1) the length of the Annual Commission Meeting and associated meetings the following year; and (2) which of the Commission's sub-groups need to meet.

### SPECIAL MEETINGS OF THE COMMISSION

The following amendments clarify the rules pertaining to Special Meetings and also reflect what has become standard practice for many years in relation to Annual Meetings.

#### Revision to Rule of Procedure B.1

1. The Commission shall hold a regular Annual Meeting in such place as the Commission may determine etc..... Special Meetings of the Commission may be called at the direction of the Chair after consultation with Contracting Governments *and Commissioners*.

#### Revision to Rule of Procedure F.2(d)

2. The duties of the Chair shall be:

*(d) to develop, with appropriate consultation, draft agenda for meetings of the Commission.*

#### *(i) for Annual Meetings:*

- *in consultation with the Secretary, to develop a draft agenda based on decisions and recommendations made at the previous Annual Meeting for circulation to all Contracting Governments and Commissioners for review and comment not less than 100 days in advance of the meeting;*
- *on the basis of comments and proposals received from Contracting Governments and Commissioners under d(i) above, to develop with the Secretary, an annotated provisional agenda for circulation to all Contracting Governments not less than 60 days in advance of the meeting;*

*(ii) for Special Meetings, the two-stage procedure described in (i) above will be followed whenever practicable, recognising that Rule of Procedure J.1 still applies with respect to any item of business involving amendment of the Schedule or recommendations under Article VI of the Convention.*

#### Revision to title of Rule of Procedure J and Rule of Procedure J.1

#### *J. Schedule amendments and recommendations under Article VI*

1. No item of business which involves amendment of the Schedule to the Convention, or recommendations under Article VI of the Convention, shall be the subject of decisive action by the Commission unless the subject matter has been included in the *annotated provisional agenda circulated* to the Commissioners at least 60 days in advance of the meeting at which the matter is to be discussed.

#### *19.2.2 Russian Federation proposal to amend Rule of Procedure E*

##### **19.2.2.1 REPORT OF THE FINANCE AND ADMINISTRATION COMMITTEE**

The F&A Committee had reviewed a proposal from the Russian Federation to change the title of Section E of the Rules of Procedure from 'Voting' to 'Decision-making' and to add the following as introductory text rather than as a Rule of Procedure *per se*:

*The Commission shall apply every effort to reach all its decisions by consensus, prima facie, on matters related to aboriginal subsistence whaling.*

While there had been broad agreement that all decisions, not just those relating to aboriginal subsistence whaling, should be reached by consensus whenever possible, there had been no agreement on the text proposed by the Russian Federation. Some Committee members felt that 'softer' language should be employed (e.g. by replacing 'shall' by 'should') and others considered that the issue might be better dealt with via a Resolution rather than via changes to the Rules of Procedure. While the Russian Federation had been prepared to soften the language, it did not consider that a Resolution would be sufficient since these are one-time events that can be easily forgotten or have to be repeated at intervals. It indicated that it wished to continue wider discussions with a view to introducing a revised proposal directly to the plenary. No further action was therefore taken by the Committee. The F&A Committee Chair had commended the Russian Federation on its willingness to accommodate the concerns expressed within the Committee and others members for their helpful approach.

##### **19.2.2.2 COMMISSION DISCUSSIONS AND ACTION ARISING**

In the Commission, the Russian Federation introduced the following revised proposal that it hoped could be adopted by consensus:

#### *E. ~~Voting~~ Decision-making*

*It would be advisable that the Commission should apply every effort in order to reach all of its decision by consensus, prima facie, on matters related to aboriginal subsistence whaling. Should a decision not be reached by consensus then the following rules of procedure shall apply:*

Some countries could support the proposed text, but others, while being sympathetic, again indicated that specific reference to aboriginal subsistence whaling should be removed since decisions by consensus on all issues would be preferable.

After further consultation, the following amendment was adopted by consensus:

#### *E. ~~Voting~~ Decision-making*

*The Commission should seek to reach its decisions by consensus. Otherwise, the following Rules of Procedure shall apply:*

At last year's meeting, the Commission agreed that the following proposed revision to Scientific Committee Rule of Procedure A.1 concerning membership and observers be



put forward for formal adoption in Berlin to comply with the required 60-day notice period:

#### A. Membership and Observers

1. The Scientific Committee shall be composed of scientists nominated by the Commissioner of each Contracting Government which indicates that it wishes to be represented on that Committee. **Commissioners shall identify the head of delegation and any alternate(s) when making nominations to the Scientific Committee.** The Secretary of the Commission and relevant members of the Secretariat shall be ex officio non-voting members of the Scientific Committee.

The Commission adopted the revised rule.

## 20. FORMULA FOR CALCULATING CONTRIBUTIONS

### 20.1 Report of the Finance and Administration Subcommittee

The F&A Committee received the report of the Contributions Task Force that had met in December 2002 and March 2003. During these meetings, the Task Force had looked afresh at the work to revise the contributions scheme, paying particular attention to the guiding principles previously agreed i.e. openness, stability, fairness and user pays. This 'fresh look' involved some re-examination of certain aspects of the contributions scheme on which there had been broad agreement, but also addressed approaches on how to handle issues related to the treatment of whaling and the inclusion of whalewatching and small cetaceans as requested by the Commission at IWC/54 in 2002. A summary of the status of main agreements reached by the Task Force on each of the four main elements that will comprise the contributions formula was provided, i.e.

#### *Annual Membership*

- The Task Force reconfirmed its earlier agreement that one of the elements of the contributions formula should be an annual membership charge that: (1) would be the same for all Contracting Governments (i.e. a flat fee); and (2) should be set at a level to reflect a real commitment to the organisation by Contracting Governments without creating an obstacle to membership by developing countries.

#### *Wealth/capacity to pay*

- The Task Force agreed that there are real advantages in terms of stability and fairness in using actual economic data for each Contracting Government rather than to divide Contracting Governments into groups based on a combination of GNI and GNI per capita, i.e. the banding approach proposed earlier and used in the Interim Measure.
- Inclusion of a specific separate factor to take external debt into account was not supported by the Task Force.
- The Task Force agreed not to recommend use of purchasing power parity (ppp) at present in recognition of problems with the quality of some existing ppp data and that new data will be available following a data-collection exercise of the World Bank during 2003. However, the Task Force also agreed that the Finance and

Administration Committee might wish to review the use of 'ppp' at some point in the future.

- The Task Force reaffirmed that the intention is to use the most recent data available from the World Bank and recognised that updating could be critically important, especially for countries whose economies are under strain.
- The Task Force agreed that to ensure transparency, it will be essential that documents defining the contributions scheme and presenting the contributions required from Contracting Governments, state clearly the exact source and effective date of economic data used.

#### *Use*

- The Task Force determined that the data available for both whalewatching and small cetaceans are not sufficient or consistent enough to include in a contributions formula, and, in light of the difficulties presented by the question of competence in relation to both issues, agreed that neither should be included in any proposal it might make to the Commission.
- Regarding bycatch, some Task Force members believed that bycatch should not be taken into account while others believed that bycaught animals entering the market should be included, although they recognised the problems with the availability of good data. The Task Force was unable to reconcile these opposing views, and for the purposes of the present work did not include bycatch.
- The Task Force agreed that ship-strikes should not be included as removals.
- At its March 2003 meeting, while some Task Force members re-stated their principled positions with respect to how to treat different types of whaling, in a spirit of compromise and as a way to move forward but without conceding on their positions, the Task Force expressed their willingness to treat all whaling equally (i.e. give equal weighting) in any further simulations.
- The Task Force confirmed that they preferred to use minke whale units rather than actual numbers of whales caught, but agreed that the Scientific Committee should review the conversion factors from time to time (e.g. every 5 years).
- The Task Force, confirmed its previous agreement to use the catches from the previous year (converted to minke whale units).

#### *Meeting attendance*

- The Task Force agreed that the use of real data based on the previous year's attendance by each Contracting Government is preferable to the use of bands.
- The Task Force recalled the Commission's agreement at IWC/54 that attendance for the host country should be based on an average of the previous three years and that the Chair of the Commission be excluded for the purposes of calculating financial contributions.
- The Task Force agreed that only delegates should be allowed entry into the Commission meeting

rooms. Support Staff (who do not have access to the meeting rooms) may need distinguishing badges, e.g. to facilitate admission to the conference venue and/or delegation rooms.

Remaining issues focused on the percentage of the total contribution each of the four elements should represent and the development of an appropriate index to represent realistically the capacity to pay of Contracting Governments.

During discussions of the F&A Committee on the report from the Task Force, the Committee Chair had noted that while there was agreement on the importance of completing a new contributions formula as a matter of urgency, views on how to proceed with the work fell into

- (1) those who wished the Task Force to proceed;
- (2) those who thought the Task Force should perhaps be discontinued; and
- (3) those who favoured continuation but with a new or reconstituted Task Force with an augmented membership.

During the meeting, Australia and South Africa had indicated that they were no longer in a position to continue to participate on the Task Force because of budget constraints. Australia also had concerns about the productivity of the Task Force and likely outcomes. Monaco had withdrawn from the Task Force after IWC/54.

The F&A Committee had considered the following five recommendations from the Task Force:

**Recommendation 1:** That work to develop a revised contributions formula that meets the agreed four guiding principles (openness, stability, fairness and user pays) should continue, taking into consideration that this is the first year in which the Task Force has met since the application of the Interim Measure for calculating contributions.

**Recommendation 2:** That, via the Finance and Administration Committee, the Commission request existing members of the Task Force to re-affirm their interest in continuing to serve, noting that one member (Monaco) has withdrawn from the Task Force.

**Recommendation 3:** That a Vice-Chair be appointed to facilitate the effective working of the Task Force.

**Recommendation 4:** that it would be appropriate to invite the Government of Argentina to be Vice-Chair of the Task Force, considering that: (1) the Government of Argentina co-sponsored with Antigua and Barbuda, the Interim Measure for calculating financial contributions currently in operation; and (2) that Argentina and Antigua and Barbuda may be perceived as broadly representing the different points of view represented within the Commission.

**Recommendation 5:** That (1) a further intersessional meeting of the Task Force should take place with provisional dates of Tuesday 16 – Thursday 18 September 2003; (2) the meeting take place in Cambridge to facilitate the participation of Secretariat staff as appropriate and ensure ready access to the necessary computing facilities.

The Chair of the F&A Committee reported that the Commission endorsed Recommendation 1 and recommended that it be adopted by the Commission. With respect to Recommendation 2, he had noted that the Task Force was originally constituted on the basis of interested parties

volunteering to serve and suggested that this approach be used again, i.e. that the Commission invites interested Contracting Governments to nominate themselves on to the Task Force to join the remaining members. The Committee agreed and recommended this to the Commission. Regarding Recommendations 3 and 4, the Committee had agreed that it was usual practice for a group itself to decide on whether or not to appoint a Vice-Chair from among its members and that therefore the recommendations needed only to be noted without making a further recommendation to the Commission. Regarding Recommendation 5, the Committee agreed to recommend to the Commission that the meeting go ahead, noting that the Secretariat had suggested that it might be more productive to delay the meeting to allow it time to carry out the further development work required. The Committee agreed that this was a matter for the Task Force.

Finally, the F&A Committee Chair drew attention to the suggestion that a time-limit should be placed on the work of the Task Force.

## 20.2 Commission discussions and action arising

The Commission noted the F&A Committee report.

St. Vincent and The Grenadines commented that the current formula is not fair and that cost is a constraint to membership for some countries. It called on Contracting Governments to work to develop a more equitable formula.

The USA noted not only its commitment to decreasing the financial burden of IWC membership for developing countries but also to agreeing a new formula that would not jeopardise the financial stability of the organisation. It reiterated its concern expressed at the last Task Force meeting regarding the current membership and composition of the Task Force given the decision by South Africa, Australia and Monaco to withdraw and Spain's expression of concern. In light of this and because of concerns regarding the ability of the Task Force to complete its work, the USA indicated that it might also withdraw if adjustments are not made to the Task Force. It therefore proposed that the Chair of the Commission, in consultation with the Advisory Committee review the membership and composition of the Task Force. Switzerland, the UK, Germany and Monaco associated themselves with these remarks.

Ireland also expressed concern that a number of countries had withdrawn from the Task Force and noted in addition, that since the current Task Force Chair had served for three years, rotation of this position might be needed. However, Ireland was also mindful of the remarks made by the F&A Committee Chair during its meeting that reconstituting the Task Force or establishing a new one would not necessarily resolve the problems. It therefore also supported the proposal from the USA, but suggested that a time limit be set for the Task Force to complete its work, i.e. in time for IWC/56.

Antigua and Barbuda recalled that in Adelaide, membership of the Task Force had been determined by asking for volunteers and that it had been appointed as Chair of both the Task Force and the Contributions Subcommittee. It believed that the Task Force had made significant progress but commented that some members (that it believed had not supported the aim of reducing the financial burden of developing countries) seemed to want to sabotage its work. Antigua and Barbuda noted that it would rather resign from the Task Force than agree to the

USA proposal. Monaco and Australia considered the statement of Antigua and Barbuda to be inaccurate and the language used unhelpful in making progress.

Noting the different views expressed, the Chair drew attention to F&A Committee recommendation that the Commission should invite interested Contracting Governments to nominate themselves onto the Task Force to join the remaining members (i.e. Task Force recommendation 2 as revised by the F&A Committee). He suggested that this be the basis on which to move forward but that the Chair and Advisory Committee should review the nominations received to ensure balance in the Task Force composition. The Commission agreed.

## 21. FINANCIAL STATEMENTS AND BUDGETS

The F&A Committee had received the report of the Budgetary Sub-committee that had worked intersessionally and had met during IWC/55 with Jean-Pierre Plé (USA) as Chair. The Budgetary Sub-committee had reviewed the provisional statement for 2002/2003 and proposed budgets for 2003/2004 and 2004/2005.

### 21.1 Review of provisional financial statement, 2002/2003

At the recommendation of the F&A Committee, the Commission approved the Provisional Financial Statements subject to audit.

The Commission endorsed the F&A Committee's proposal that, to minimise postage costs, Commissioners and Contracting Governments that still request Circulars and documents in hard copy be asked to review whether this is still necessary and, if so, to reduce to a minimum the number of copies they request.

### 21.2 Consideration of estimated budgets, 2003/2004 and 2004/2005

As recommended by the F&A Committee, the Commission:

- (1) adopted the budget for the 2003-2004 financial year (Annex K), including the provision for research expenditure (Annex L) .
- (2) agreed that for the 2004 Annual Meeting the registration fee for non-government observers be set at £570 and that the media fee at £30.
- (3) agreed that in relation to the accommodation of the Secretariat and in view of the fact that the current lease expires in 7 years, the Secretariat should explore a range of alternatives including: (1) continuing to rent the Red House; (2) purchase the Red House or another suitable property in Cambridge or elsewhere in the UK; (3) relocation of the Secretariat to another member country; and report back to the Budgetary Sub-committee;
- (4) agreed that the best way to achieve the 5% saving in the Annual Meeting budget for IWC/56 is to reduce the overall length of the meeting by one day.
- (5) with respect to the Budgetary Sub-committee:
  - (a) agreed that the Secretariat should undertake the routine maintenance of the rota for membership of the Sub-committee and that it should confirm

membership of the Sub-committee soon after each Annual Meeting;

- (b) agreed that the Secretariat be asked to review the current rota system with a view to: making it more attractive for countries to serve on the Sub-committee; providing greater continuity; improving the process for selection of the Sub-committee Chair; and reporting back to the Budgetary Sub-committee for further action as appropriate.

The Commission noted the F&A Committee's discussions on the differing views of countries regarding the duration of the Interim Measure for financial contributions. In the Commission, Monaco, who had not been able to attend the meeting of the F&A Committee, noted that its understanding from discussions at IWC/54 was that the Interim Measure had been adopted with a time limit of three years. It asked for clarification from the Secretary. The Secretary noted that following IWC/54, she had sent out a Circular Communication to Commissioners and Contracting Governments indicating that although not explicitly spelt out in the Interim Measure adopted, the Secretariat's understanding was that the intent was the same as the proposal from the Task Force for a similar measure, i.e. that there was a three-year time limit. On receiving a letter from the Commissioner of Antigua and Barbuda indicating that his understanding that its joint proposal with Argentina had been adopted without a time clause, the Secretariat looked again at the documentation available and listened to the verbatim recording of that agenda item. This review revealed that both the documents and the vote on the Interim Measure in Shimonoseki were silent regarding a time clause. The Secretariat therefore concurred that the Commission had adopted the Interim Measure without a termination clause and a Circular Communication was distributed to this effect in December 2002. There were no further discussions.

Japan indicated that it wished to reserve its position regarding the payment of financial contributions for 2003-2004 until it had had time to consider the implications of the outcome of the 55th Annual Meeting.

Norway requested that its view expressed during the F&A Committee that membership of the Budgetary Sub-committee be open to interested countries be included as one of the options under item (5) above.

The Russian Federation re-iterated its comment made during the F&A Committee meeting regarding Invited Participants to the Scientific Committee. While it does not object to the Scientific Committee addressing the issue of falsification of past catch data from the USSR, it is against the use of IWC funds to support the participation in the IWC Scientific Committee or in the planned small technical workshop to be held in 2004 of invited participants who provide non-verifiable data that are not presented for review to the Russian Federation.

## 22. ARREARS OF FINANCIAL CONTRIBUTIONS

### 22.1 Report of the Finance and Administration Committee

The Secretariat had reported that the implementation of the Interim Measure for calculating financial contributions had proceeded without significant difficulties and that a positive effect has been that a greater part of the

Commission's revenue now comes from the countries with larger, more developed economies that have established the practice of paying earlier in the annual cycle.

At last year's meeting, the Commission adopted a series of amendments to its Financial Regulations designed to:

- (1) reduce the likelihood of Contracting Governments falling seriously into arrears with their financial contributions;
- (2) minimise the financial consequences for the IWC if they do; and
- (3) provide a mechanism by which any Contracting Government with arrears can arrange to repay them over a period and thus secure the lifting of the penalties of interest and suspension of the right to vote which are automatically imposed when arrears occur.

As the Commission decided to apply these regulations retrospectively, the debts of those Governments that had already incurred substantial arrears were substantially reduced. The Secretariat reported that these Governments had responded positively to the changed regulations and noted that the Commission should ultimately benefit not only from the renewed participation of these governments but also from the possibility of recovering more than £300,000 which would otherwise be irrecoverable.

First indications of linking more closely the right to vote at Annual or Special Meetings with payment of contributions, are that the new measures are having the desired effect and should reduce the likelihood of governments falling into arrears.

The Secretariat had also reported that it tries to maintain contact with all governments with contributions outstanding and that they had been invited, prior to IWC/55, to provide information about their situation and when payment might be expected. In addition, and in accordance with the recommendation of the Finance and Administration Committee last year, the Chair of the Commission had also made 'representations to Governments in arrears ... urging a resolution to the problem'.

## **22.2 Commission discussions and action arising**

The Commission noted the report from the F&A Committee.

## **23. ADOPTION OF THE REPORT OF THE FINANCE AND ADMINISTRATION COMMITTEE**

The Commission adopted the report of the F&A Committee.

## **24. DATE AND PLACE OF ANNUAL AND INTERSESSIONAL MEETINGS**

### **24.1 56<sup>th</sup> Annual Meeting, 2004**

Italy reported that IWC/56 will be held at the Sorrento Palace Hotel in Sorrento during the period 27 June to 24 July – the exact timing to be decided by the Commission.

The Secretary introduced a provisional schedule for the meeting. The Commission agreed with the timing proposed, i.e. that the Scientific Committee meet from 29 June to 10 July, the Commission sub-groups in the period from 13 to 16 July, and the Commission from Monday 19 to Thursday 22 July 2004.

With respect to the Commission's subgroups, the Secretary had proposed a meeting schedule involving the Budgetary Sub-committee, the Aboriginal Subsistence Whaling Sub-committee, the Infractions Sub-committee, the newly-created Conservation Committee, and the Finance and Administration Sub-committee. Provision for discussions on the RMS was also included. It was suggested that as this year, meetings of the Contributions Task Force and Contributions Sub-committee should not be necessary since the Contributions Task Force can report directly to the F&A Committee. It was also suggested that in view of the in-depth 3-day Workshop on Whale Killing Methods and Associated Welfare Issues held this year, it might not be necessary for the Working Group to meet at IWC/56. Rather Contracting Governments could report directly to the Commission.

Several governments stressed that at least one day should be set-aside for the Conservation Committee. Norway, Antigua and Barbuda, Japan and the Russian Federation commented that this group should not be included in the schedule since it could not be established until Rules of Procedure and Terms of Reference were agreed. Others disagreed. The UK and Brazil were disappointed that a meeting of the Working Group on Whale Killing Methods and Associated Welfare Issues had not been included in the proposed schedule. The UK considered that if there is no meeting of the Working Group, there is a danger that the issue may fall by the wayside.

The Chair noted that given the comments, it would be difficult to reach consensus on the schedule for the Commission sub-group meetings in plenary. The Commission agreed to his suggestion that this issue be left to the Advisory Committee.

### **24.2 57<sup>th</sup> Annual Meeting, 2005**

The Commission gratefully accepted the invitation from the Government of the Republic of Korea to hold its 57<sup>th</sup> Annual Meeting probably in May 2005 in the city of Ulsan. The Republic of Korea looked forward to welcoming delegates and observers to Ulsan.

### **24.3 Other**

In the context of possible ways to reduce costs, Norway believed that some thought should be given to reducing the frequency of Annual Meetings. It noted that it might return to this issue next year.

## **25. ELECTION OF THE CHAIR AND VICE-CHAIR**

As Bo Fernholm and Henrik Fischer were completing their three-year terms as Chair and Vice-Chair respectively, new officers had to be elected.

The UK nominated Henrik Fischer as Chair. This was seconded by Japan and endorsed by the Commission. Henrik Fischer thanked Commissioners for their trust, given at a time when the organisation is facing problems in making progress with certain items. Henrik Fischer noted that the answer to difficult questions is rarely black or white and requested Commissioners to work with him with open minds and in a spirit of co-operation and compromise. He stressed that everyone must be flexible and gave assurances that he would offer no-one VIP treatment and that no-one would be neglected. He also thanked the

outgoing Chair for the good co-operation they had experienced over the past three years.

Two nominations were made for the position of Vice-Chair. Claris Charles (Grenada) was nominated by Antigua and Barbuda and supported by St. Lucia and Norway. Carlos Dominguez Diaz (Spain) was nominated by the USA and supported by Mexico. At the request of Monaco, a secret ballot was held. Claris Charles received 19 votes and Carlos Dominguez Diaz 26 votes. There were two abstentions. Carlos Dominguez Diaz was therefore duly appointed as Vice-Chair. The new Vice-Chair noted the great responsibility of this position and hoped that he could be of use to all members of the Commission.

## 26. ADVISORY COMMITTEE

St. Lucia completed its two-year term on the Advisory Committee at last year's meeting, but was invited to remain for a further year. The USA completed its two-year term at IWC/55. New members therefore needed to be appointed to replace them and to broadly represent the interests within IWC.

The Chair called for nominations. The Commissioner for Dominica was nominated by Iceland to replace St. Lucia and the Commissioner for the UK was nominated by the USA. Both nominations were unopposed and thus both therefore join the Chair and Vice-Chair of the Commission and the Chair of the F&A Committee (Odd Gunnar Skagestad, Norway) on the Advisory Committee.

Denmark drew attention to Rule of Procedure M.9, noting that the appointment of the two Commissioners to broadly represent the interests within IWC is for two years on alternate years. Since St. Lucia had remained on the Advisory Committee for three years, Denmark noted that the term of the Commissioner for Dominica should be for one year only, while that of the UK Commissioner would be for two years. The Commission agreed.

## 27. SECRETARY'S REPORT

At the 53<sup>rd</sup> Annual Meeting in London in 2001, the Commission agreed that a Secretary's Report should replace the 'Annual Report' that had been produced in the past, such that the new document: (1) reports the activities from the end of one Annual Meeting to the end of the next, thus making it possible to include a summary of the decisions made at the most recent meeting; (2) contains the audited financial statements for that financial year; and (3) gives a more comprehensive overview of the work of the Commission and the Scientific Committee.

A draft of the first Secretary's Report, i.e. for the year 2000-2001, was produced and circulated to Commissioners and Contracting Governments last year but was never finalised and published in view of some of the comments received expressing concern regarding (1) the limited time given for review; (2) the degree of duplication between the Secretary's Report, the Chair's Report and the Summary of Decisions and Required Actions contained in the Chair's Report; and (3) the omission of items of national interest that some governments felt should be included in the report.

However, at IWC/54 the Commission agreed that the Secretary should continue to produce a report.

A Draft Secretary's Report for the Year 2001-2002 was presented to the meeting. The Secretary noted that once again it was being circulated much later than had been

hoped, the delay being largely a result of the high degree of intersessional activity between the 54th and 55th Annual Meetings. Drawing attention to

- (1) the fact that there is no requirement in either the Convention or the Commission's Rules of Procedure for an Annual Report/Secretary's Report;
- (2) that with the exception of summary of catch data, information in the Secretary's report appears elsewhere; and
- (3) the difficulty experienced in circulating the Secretary's Report in a timely fashion,

the Secretary asked the Commission whether they wished the production of this document to continue.

The Commission decided to discontinue the Secretary's Report on the understanding that information that does not appear elsewhere (e.g. summary of catch data) is made available by other means. The summary of catches by IWC member nations in the 2002 and 2002/2003 seasons is available as Annex M.

## 28. SUMMARY OF DECISIONS AND REQUIRED ACTIONS

A summary of decisions and actions required is provided at the beginning of this report.

Mexico recalled earlier comments by Norway, the Russian Federation, Antigua and Barbuda and Japan referring to the 'so-called' decision to establish the Conservation Committee. Mexico found this attitude unacceptable as it called into question the ability of those Contracting Governments to abide by the rules of the organisation. It noted that the Conservation Committee had been established by adoption of a Resolution, and believed that any attempt to undermine that decision would be seen as a move to undermine the Commission itself and to destroy the integrity of its decision-making process.

## 29. OTHER MATTERS

On behalf of the Commission, the Chair extended his deep-felt thanks to the Government of Germany for hosting the 55<sup>th</sup> Annual Meeting and for the excellent facilities and hospitality provided. Germany indicated that it had been an honour and a pleasure and thanked the Secretariat for their support and assistance. The Chair also thanked the Secretariat with whom he had worked closely for the last three years, finding them to be a dedicated and hard-working group of people. In particular, and on behalf of the Commission, he thanked Martin Harvey, Executive Officer, who was leaving IWC for pastures new after 27 years. The Chair indicated that he would miss Martin's wise council and gracious guidance under what had sometimes been trying circumstances. Finally, on behalf of the Commission, Mexico thanked Bo Fernholm for his hard work as Chair over the last three years.

The meeting was closed at 16.00 on Thursday 19 June 2003.

## 30. AMENDMENTS TO THE SCHEDULE

The amendments to the Schedule adopted at the meeting are provided in Annex N.