

Draft Recommendations from the Intersessional Group on Quorum

This document has been prepared by the Secretariat so as to report the draft recommendations arising from the work of the Intersessional Group on Quorum (IGQ) ahead of the 60 day deadline established under Rule of Procedure R¹.

The IGQ was formed following discussions on the proposed South Atlantic Whale Sanctuary at IWC/63 in 2011. The role of the group is 'to consider the interpretation of the Commission's Rules of Procedure regarding the quorum necessary for a decision to be taken and, if appropriate, to present for the consideration of the Commission at IWC/64 a proposal to amend the Rules so as to clarify the matter'². The group's Chair is Mr. G. van Bohemen (New Zealand), and the membership of the IGQ is given at Annex A.

During the intersessional period the IGQ has considered two documents³. The first, IWC/2012/IGQ 1, gave a review of quorum practices in other Inter-Governmental Organisations. In commenting on this document, members of the IGQ highlighted the separate elements of the Commission's procedures on quorum that required clarification and gave initial thoughts on how this may be achieved.

The second document, IWC/2012/IGQ 2, contained the first proposals for clarification of the Commission's rules and procedures based on the comments received on document IWC/2012/IGQ 1. Individual responses from members of the IGQ to the second document are provided in Annex C.

In commenting on IWC/2012/IGQ2, most respondents supported the following draft amendment to Rule B.1:

The presence in the room of Attendance by a majority of the members of the Commission shall constitute a quorum, ***which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.***

Additionally, in responding to IWC/2012/IGQ 2, one member proposed a further clarification to the above draft change as follows which includes placement of part of the text under Rule F dealing with duties of the Chair:

B.1

The presence in the room of Attendance by a majority of the members of the Commission shall constitute a quorum ***which shall apply to all types of Commission business including the opening and adjournment of all sessions of a meeting, proceeding with the debate and decision making, whether by vote or by consensus.***

F.2. (c) ***to announce prior to each vote if a quorum is present. If members of the Commission choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain. The Chair shall also*** call for votes and ***to*** announce the result of the vote to the Commission.

In relation to the above proposals, when responding to IWC/2012/IGQ 2, one member re-iterated its preference that a quorum be determined at the start of a given session rather than at the actual time a vote is taken so as to prevent the possibility of a walkout during the session. This member preferred that the draft change should read:

The presence at the start of the session of Attendance by a majority of the members of the Commission shall constitute a quorum, ***which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.***

In responding to document IWC/2012/IGQ 2, this member also re-stated its view that ideally the quorum should be determined by reference to those ICRW parties present at the meeting, rather than from the IWC membership as a whole.

¹ Rule of Procedure R states that the Commission's Rules of Procedure ... may be amended at any time ... but the full draft text of any proposed amendment shall be circulated to the Commissioners at least 60 days in advance of the meeting at which the matter is to be discussed.

² Annual report of the International Whaling Commission 2011 page 24.

³ Both documents (IWC/2012/IG-Q 1 and IWC/2012/IG-Q 2) are available from the Finance and Administration section of the IWC/64 documents website.

In a separate but related issue, members of the IGQ also provided comments on the question of whether Contracting Governments with a suspended vote should be included in the quorum necessary for decision making.

Current practice within the Commission is that Contracting Governments with a suspended vote are included within the quorum. Responses received from IGQ members showed an even division of opinion on this issue, with some members stating their strongly held view that suspension of voting rights does not mean suspension of membership, and their wish to continue with the present situation.

Those members who did consider that Contracting Governments with a suspended vote should be excluded from the quorum were able to agree on text for a draft rule modification that would create this change. The text of this draft rule change, that received partial support, is given in Annex B.

The IGQ also considered the question of whether members whose credentials are under review can participate in voting. Comments received in response to IWC/2012/IGQ 1 indicated that there was consensus amongst the group that Commissioners whose credentials are under review may not participate in a vote. Given the current situation where the Chair can use his discretion to postpone a vote, the IGQ did not suggest a need to change the Commission's current rules or procedures in this regard.

Finally the IGQ also considered whether it is necessary to clarify the IWC's rules with regard to decision making by consensus as opposed to voting. The overall range of views expressed was that the requirement for a quorum is an on-going one which is necessary for *inter alia* a range of decisions such as endorsement of reports which take place during the course of a meeting. The draft rule change proposed above includes the broad phrase '***shall apply to all types of Commission business***' and as such includes decisions made by consensus.

The issue of amendment to the Commission's rules on quorum and the timing of their introduction will be considered at the meeting of the Finance and Administration Committee on 28 June, and it will also be discussed at the private meeting of Commissioners scheduled for 1 July.

Annex A

**MEMBERSHIP OF THE INTERSESSIONAL GROUP TO EXAMINE THE ISSUE OF A QUORUM
WITHIN THE IWC RULES OF PROCEDURE**

ARGENTINA

Santiago Villalba

BRAZIL

Marcus Paranagua

CHILE

Jose Fernandez

JAPAN

Shinji Hiruma

Kenji Kagawa

Kiyoshi Katsuyama

Akiko Muramoto

Takaaki Sakamoto

Akima Umezawa

MONACO

Frederic Briand

NEW ZEALAND

Gerard van Bohemen

PANAMA

Tomas Guardia

SWITZERLAND

Bruno Mainini

UK

Jim Gray

Jolyon Thomson

USA

Keith Benes

Roger Eckert

SECRETARIAT

Simon Brockington

Greg Donovan

Annex B

**DRAFT RULE CHANGE REGARDING THE INCLUSION OF CONTRACTING GOVERNMENTS
WITH A SUSPENDED VOTE IN THE CALCULATION OF THE QUORUM**

The main body of this document notes that only partial support for this measure was received in comments returned from members of the IGQ. However, those members who did support this change were able to agree on the following draft text. Any change to Rule B.1 would be additional to that proposed in the main body of this document:

B.1

Attendance by a majority of the members of the Commission *whose right to vote has not been suspended under paragraph E.2* shall constitute a quorum.

Annex C

COMMENTS RECEIVED FROM MEMBERS OF THE IGQ ON DOCUMENT IWC/2012/IGQ 2.

1 GOVERNMENT OF AUSTRALIA



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

**Intersessional Group on Quorum (IGQ): Summary of responses to the quorum review document, and suggestions for clarifications to the IWC's rules and procedures
Australia's comments – 12 April 2012**

Australia considers that the paper prepared by the Chair of the IGQ and the IWC Secretariat represents a helpful summary of responses received to the Quorum review document and proposes some sensible next steps in moving forward on this issue towards IWC64. Australia's comments in relation to the five specific Actions proposed in the paper are outlined below.

**Action one: on when and how the requirement for a quorum should be applied
3.1.2 Suggested draft rule changes in light of the comments received regarding Action One**

Rule B.1: *The presence in the room of Attendance* by a majority of the members of the Commission shall constitute a quorum, **which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.**

Or

The presence at the start of the session of Attendance by a majority of the members of the Commission shall constitute a quorum, **which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.**

- The suggested draft change to Rule B.1 effectively clarifies when and how the quorum requirement should be applied at the IWC.
- Consistent with Australia's view that quorum is an ongoing requirement that applies throughout the meeting, our preference is for the first amendment proposal under paragraph 3.1.2. However, we would be happy for both proposed textual changes to be put forward for discussion at the Private Commissioners' Meeting.

Action two: on whether Contracting Governments with a suspended vote should be included in the quorum necessary for decision making

3.2.2 Suggested draft rule changes in light of the comments received regarding Action Two

Rule B.1: Attendance by a majority of the members of the Commission **whose right to vote has not been suspended under paragraph E.2** shall constitute a quorum.

- As differing views exist amongst members of the IGQ as to whether Contracting Governments with a suspended vote should count towards the decision-making quorum, we agree that this issue (and the suggested draft rule change to Rule B.1) would benefit from further discussion at the Private Commissioners' Meeting.

- If the Commission's preference is that only members who have paid their dues should be included as part of quorum, the suggested draft rule change to Rule B.1 seems appropriate.

Action Three: on whether members whose credentials are under review can participate in voting

Given the above consensus that Commissioners whose credentials are under review may not participate in a vote, and the current situation where the Chair has discretion to postpone a vote there does not appear to be a need to change the Commission's current rules or procedures.

- Australia agrees with the proposed approach to Action three.

Action Four: on whether it is necessary to clarify the IWC's rules with regard to decision making by consensus as opposed to voting

The overall view expressed is that the requirement for a quorum is an ongoing one which is necessary for inter alia a range of decisions such as endorsement of reports which take place during a meeting. The draft rule change suggested under Action One above includes the broad phrase '*which shall be required for any decision to be taken*' and as such includes decisions made by consensus.

- Australia agrees with the proposed approach to Action four.

Action Five: on methods to establish Commission agreement on quorum clarifications ahead of the first substantive Agenda Item at IWC/64

In light of these comments (mixed views), discussion on quorum will be added to the Agenda for the Private Commissioner's Meeting, where consideration of any recommendations made by the Finance and Administration Committee during the Sub-group week will be possible.

- Australia agrees with proposed the approach to Action five.

2 GOVERNMENT OF JAPAN

Dr. Simon Brockington
Secretary to the Commission

This responds to your email dated 2012/03/21 addressed to the Intersessional Group on Quorum (IGQ). At the outset, I wish to thank you and the Chair of the Intersessional Group, Mr. Gerard van Bohemen, for your efforts to make the well-prepared summary of responses attached to your e-mail. The following indicates our specific comments on each item.

Item 3.1

First, I thank you for clearly incorporating our previous comment that the March 2010 intersessional meeting should not be used to set IWC practice as only 35 of the Commission's 88 members attended. Consistent with the views expressed by other members of IGQ, the quorum requirement is an ongoing throughout the meeting, and applied to all types of business of the Commission, including opening the meeting as well as proceeding with the debate.

In order to clarify the above, I would like to propose to amend the suggested draft rule changes in sub-paragraph 3.1.2 as following:

(First sentence should be) *The presence in the room of a majority of the members of the Commission shall constitute a quorum which shall apply to all types of Commission business including the opening and adjournment of all sessions of a meeting, proceeding with the debate and decision making.*

With the amendment of the 1st sentence above, I also wish to note that the second sentence should be moved to Rule F. 2 as following:

(F.2. (c) bis) *to announce prior to each vote if a quorum is present*

The third sentence with a modification of replacing "participants" with "members of the Commission" has to be remained.

Regarding Item 3.2

As I emphasized in my previous communication, the suspension of voting rights does not mean the suspension of the membership. Any Contracting Government, even when their right to vote is suspended, can attend and be present as a member of the Commission in the room at the time of decision making. We are of the view that it is unreasonable to exclude Contracting Governments with their voting rights suspended from constituting a part of the quorum. Therefore, we fully support your second interpretation that, as we strongly wish to continue with the present situation (i.e. that all Contracting Governments count towards the quorum), no change is required on Rule B.1 except for the above.

Regarding Item 3.3

I consent on your conclusion that "there does not appear to be a need to change the Commissions current rules or procedures". However, I would like to point out that while the duties of the Commission Chair include calling for votes (Rule F), the Rules of Procedure do not explicitly give the Chair power/freedom to postpone a vote.

Regarding Item 3.4

My suggested wording (*The presence in the room of a majority of the members of the Commission shall constitute a quorum which shall apply to all types of Commission business, including the opening and adjournment of all sessions of a meeting, proceeding with the debate and decision making.*) provided in response to item 3.1 above is clear enough to explain that the requirement of a quorum is an ongoing one and that the quorum is required for all decisions. Nonetheless, if further clarity is necessary in terms of decisions made by consensus, the following sentence (added parts are underlined) is suggested.

The presence in the room of a majority of the members of the Commission shall constitute a quorum, which shall apply to all types of Commission business, including the opening and adjournment of all sessions of a meeting, proceeding with the debate and decision making whether by vote or by consensus.

Regarding Item 3.5

I just would like to reiterate the Rules of Procedure and the relevant provision of the Convention. Any decision with regard to the business of the Commission should be made at the Commission for ensuring the transparency, while we can have discussion on quorum at any fora, such as F&A and the Private Commissioners' Meeting.

Sincerely,

Kenji Kagawa
Commissioner for Japan to the International Whaling Commission
Chief-Counsellor
Resources Management Department
Fisheries Agency
Ministry of Agriculture, Forestry and Fisheries
Government of Japan

3 GOVERNMENT OF SWITZERLAND

Dear Secretary, dear Simon,

Thank you very much for this consultation. I am of the opinion that the issue needs clarification and therefore I am very satisfied that the Intersessional Group came up with proposals. Any of the proposals is acceptable. However preference is given to the following options:

Rule of Procedure B.1

The presence in the room of ~~Attendance by~~ a majority of the members of the Commission shall constitute a quorum, which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.

Rule B.1:

Attendance by a majority of the members of the Commission whose right to vote has not been suspended under paragraph E.2 shall constitute a quorum.

With kind regards

Bruno

Bruno Mainini
Swiss CITES MA
International Affairs
Federal Veterinary Office FVO
Federal Department of Economic Affairs FDEA

4 GOVERNMENT OF UNITED KINGDOM

Simon,

Many thanks to you and Gerard for producing this helpful paper in the light of the contributions made to the ICGQ.

The UK believes that any rule change should allow for the operation of clear procedures and that such procedures should be applicable for the business of IWC64. To that end it is important that a proposed rule change be submitted to Commissioners by the 60 day deadline so that agreement on the rule change can be reached at IWC64.

We would reiterate our preference that a quorum be determined at the start of a given session rather than at the actual time a vote is taken so as to prevent the possibility of a walkout and the disrepute that such a move brings for the organisation. That said, if it is to be decided that a quorum should be determined to be present in the room for the taking of a vote, any quorum effective at the calling of a vote should be deemed to exist for the duration of that vote. The UK remains of the view that only those with voting rights should count towards a quorum and, ideally, that the quorum should be determined by reference to those ICRW Parties present at a meeting, rather than the IWC membership as a whole.

If it is not possible for the Chair of the ICGQ to submit a finalised proposal by the 3 May deadline because differences of view remain among ICGQ members as to the precise terms of any rule change, the UK believes that a proposal should nevertheless be submitted containing the various options contained in the paper so that this can form the basis for negotiation at IWC64. In that event the UK of course reserves its position on the precise terms of any rule change pending those negotiations, not least as we would like to be in a position to consult colleagues in other EU Member States on that position.

With kind regards,

Jolyon

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5 GOVERNMENT OF USA

Dear Gerard and Simon,

Thank you for your summary of responses to the quorum review document and your suggestions for clarification to the Commission's Rules of Procedure. The United States agrees with the overall view of the Intersessional Group on Quorum that the requirement for a quorum is an ongoing one. We offer the following comments on your draft options for changes to the Rules of Procedure.

Action One on when and how the requirement for a quorum should be applied

You suggested two options for changes to Rule of Procedure B.1, with new text is shown in *bold italic*:

The presence in the room of Attendance ~~by~~ a majority of the members of the Commission shall constitute a quorum, *which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.*

Or

The presence at the start of the session of Attendance ~~by~~ a majority of the members of the Commission shall constitute a quorum, *which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.*

The United States believes that any new rule on quorum should be clear, workable and avoid ambiguity. In our view, the first choice, above, satisfies that requirement, whereas the second does not. The problem with the second choice is that it can be read two ways: (1) a majority of members of the Commission must be present in the room for any decision to be taken; or (2) quorum should be determined at the start of a session and deemed to apply for the duration of that session, regardless of whether a majority of members are present in the room prior to a decision. The first choice, above, avoids this ambiguity and properly reflects that the requirement for a quorum is an ongoing one.

Action Two on whether Contracting Governments with a suspended vote should be included in the quorum necessary for decision making

As indicated in our prior comments, the United States feels it is sufficient to determine quorum simply based on Commission members, regardless of their ability to vote.