

**WILDLIFE AND COUNTRYSIDE LINK**  
**COMMENTS ON THE**  
**PROVISIONAL ANNOTATED AGENDA FOR IWC57**

May 2005



# **IWC57: Briefing to the UK**

## **Key issues**

Wildlife and Countryside Link (Link) urges you to take the following positions on the main issues at the meeting:

- Apply international diplomatic pressure over Japan's ongoing whaling in the southern ocean, including the proposed expansion of JARPA
- Propose or support an amendment to Rule Q of the Commission's Rules of Procedure to exclude proposed research permits from this rule and direct the Secretariat to post all proposals for Special Permit research on the IWC's website upon receipt.
- Find the data on the status of the Dall's porpoise and, if unsuccessful, request that the precise location of these data be made available by the end of the meeting.
- Continue to support NGO participation using a code of conduct similar to other multilateral organisations.

Wildlife and Countryside Link (Link) is grateful for the time taken by our current and previous fisheries ministers to attend IWC meetings and for the firm stance taken. We believe that this high level representation from the UK has helped to publicly confirm the importance that the UK attaches to this issue. We encourage the UK to continue to be represented at this level.

This year Japan may command a simple majority bloc and we urge the UK to consider what diplomatic activities it will take outside the Commission to prevent Japan obtaining or using a simple majority.

Three countries are presently unable to attend the IWC with voting rights. Kenya and Costa Rica owe the IWC considerable back dues and have not found a way to pay those dues. Uruguay left the IWC with back dues and would need to settle its debt in order to re-join. A number of other countries that vote with Japan are successfully maintaining their re-payment schedules to clear their present debt. We ask the UK to propose a debt amnesty at the IWC in Ulsan. This would effectively allow the participation of three conservationist countries. It would also be completely in line with UK Foreign policy on debt forgiveness as articulated by the prime minister and chancellor at the G8 and other recent events. IWC debt is particularly iniquitous as no benefits have been provided to the countries concerned, which simply did not attend IWC meetings during the period that the debt accrued.

## **2. Adoption of Agenda**

Japan has indicated that it will propose to amend the agenda to delete a number of items, including Whale Killing Methods and Associated Welfare Issues, Brazil, Argentina and South Africa's whale sanctuary proposal, health issues, whale watching, small cetaceans and the Conservation Committee. We urge the UK to work with the other Like Minded governments to ensure this amendment is defeated.

## **3. Secret ballot**

This is the same proposal as last year when Japan came within 6 votes of introducing secret ballots. This vote, which needs only a simple majority to pass, will be critical to the outcome of this and future meetings. The UK should ensure that no Like Minded Government will abstain on, or be absent for, this issue and should press any uncommitted parties to join them in opposing this move, which runs contrary to modern trends of accountability and transparency in international organisations.

## 4. Whale stocks

Link encourages the UK to refer to whale “populations” rather than whale “stocks”.

### 4.1 Antarctic minke whales

The Commission agreed in 2000 that the estimate of 760,000 was not appropriate, and that numbers may be “appreciably lower”. Despite considerable effort, the Scientific Committee has been unable to agree a new estimate (subject to the outcome of the IWC Scientific Committee discussions this year).

Link urges the UK to:

- Emphasize that there is still no agreed estimate for this population and that the Scientific Committee has not been able to meet the Commission’s request for an explanation of the apparent population decline;
- Point out that the latest science, including the accelerated break-up of the Larsen B ice shelf and glacial retreat on the peninsula, indicates a strong impact of global warming on the Antarctic, and raise the point that the Scientific Committee has not been able to rule out a precipitous decline in this population.
- Criticize Japan’s ongoing whaling in the southern ocean, including the proposed expansion of JARPA.

### 4.2 In-depth assessment of western North Pacific common minke whales

Due to uncertainties about stock structure, the Scientific Committee recommended an in depth assessment before proceeding further with implementations on this population, noting that before this assessment could be undertaken more work was needed on analysis of survey data; further work on stock identity; and consideration of ways to elucidate the proportion of ‘J’ stock animals found in the Sea of Japan. This work was entrusted to a further intersessional group.

Late in the Scientific Committee’s plenary session in 2004, the focus switched to a proposal from the RMP working group that very few members of the Committee understood. In effect the Committee (or that part of the Committee that understands such matters) is offering the Commission an option to adopt a less-precautionary whaling “variant” for a ten year trial period (e.g. a combination of *Small Areas* which would allow coastal whaling by Japan). This is achieved through amendment of the RMP annotations and allowed only if (i) research to address uncertainties in the variant (e.g. population structure) are addressed through a research program; (ii) if certain other requirements are met, including specification that a candidate package is selected from the most conservative of the less conservative set); and if *IST* “trials” to assess acceptable performance over the long and short-term are completed.

It was noted during the course of the debate that this was a change of practice for the Scientific Committee. It appears that, despite the problems in stock structure, this method might generate quotas for depleted populations.

When this complex proposal came to the Commission, there was again confusion as to its meaning and Australia asked for a full explanation, which is scheduled to be given at the 2005 meeting. It is very important that the like-minded fully appreciate the implications of the changes proposed. The UK should join with others to request a full explanation and oppose this fundamental revision of whaling management via its scientific team. Link would like clarification from the UK of the purpose they believe this new protocol serves, and whether UK scientists are supporting it.

#### ‘J Stock’

Both Japan and Korea argue that increasing catches/bycatch of J stock minke whales indicate that the population is increasing in abundance (but see Para. 17 Infractions, Korea). Japan states that the population is greater than 15,000 animals despite a consensus agreement by the Scientific Committee that the population will go extinct if the current level of incidental catch is maintained. Link urges the UK to draw attention to the fact that:

- any whaling of North Pacific minke whales involves a risk of take of the depleted J stock; and
- Given this situation, any coastal whaling would be reckless and any expansion of coastal whaling totally unacceptable based on the modelling conducted by the Scientific Committee;
- increasing bycatch on the population could be attributed to changes in distribution or increased fishing effort, or directed catches disguised as by-catch.

#### **4.4 Other small stocks**

##### **North Atlantic Right Whale**

This population is probably the only potentially viable population of this species in the Northern Hemisphere and is in serious danger (ca 300 animals). The Scientific Committee has repeatedly warned that there should be no direct anthropogenic removals from this population, "that it is a matter of absolute urgency that every effort be made to reduce anthropogenic mortality in this population to zero" and that no further research is needed before implementing any currently available management actions to reduce anthropogenic mortalities.

However, individuals from this population are continuing to die or become seriously injured as a result of entanglement in fishing gear, or being struck by ships (including one pregnant female killed by a navy vessel). Eight whales died, were injured by ship strikes, or entangled in fishing gear in a five month period between 2004 and 2005. See Annex 1 for list of incidents.

Link urges the UK to ask Scientific Committee to assess the potential for vessel speed limits to protect this population, and to recommend that appropriate speed limits and coast-wide fishing restrictions / modifications should be in effect.

##### **North West Pacific Gray whale**

The Scientific Committee has repeatedly warned that the western gray whale population is in serious trouble and 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 it from extinction (note to IWC Resolution 2004-1). We note that the Expert Panel which reviewed the potential impact of oil and gas development on this population, said that "the most precautionary approach would be to suspend present operations and delay further development of the oil and gas reserves in the vicinity of the gray whale feeding grounds off Sakhalin, and especially the critical nearshore feeding ground that is used preferentially by mothers and calves." Link supports this approach and urges the UK government to propose that this language is endorsed by the IWC and communicated to all relevant parties.

#### **4.5 Other**

##### **Northeastern Atlantic minke whales**

Despite the fact that Norway's markets cannot absorb more than 500 whales a year, Norway is determined to raise the quota. The UK, especially its scientists, should vigorously oppose the government of Norway's unilateral resumption of commercial whaling and attempts to change the tuning level or other parameters of the RMP.

It became clear at the recent meeting of the Advisory Committee of ASCOBANS that the UK-funded extension of the SCANS II survey into deeper offshore western waters that will take place in 2007, and will abut the area surveyed by NAMMCO as part of its NASS surveys. These surveys

are used by Norway and others to create minke population estimates from which quotas are calculated. Link requests insight from DEFRA as to the likelihood of UK-funded research contributing towards minke whale quota generating mechanisms outside of UK waters. We urge that any extended SCANS survey overlaps the NASS survey area to provide an independent assessment of the accuracy of the NASS survey. Link members would like the UK to reinstate the ban on Norwegian surveys of UK waters that are used to calculate quotas for commercial whaling.

## **Sperm whales**

Noting that an in depth assessment of sperm whales is planned, Link urges the UK to note the increased evidence of distinct cultures within sperm whale populations and the need to conserve these.

## **5. Aboriginal Subsistence Whaling**

### **5.1 Aboriginal Subsistence Whaling Management Scheme**

Link is concerned that, despite the title of this agenda item, the Commission has not begun to develop a management scheme to accompany the Aboriginal Whaling Management Programme which the Scientific Committee is progressing. The IWC must consider its own management responsibilities for these hunts, including the documentation and evaluation of 'needs', and compliance issues. If the management of ASW is not reformed - including the agreement of effective definitions of the terms concerned, we believe that this category of whaling will increasingly be subject to abuses that are already illustrated by Greenland (see below).

### **5.2 Aboriginal Subsistence Whaling Catch Limits**

#### **Bering Chukchi Beaufort stock of bowhead whales**

Determined efforts are being made by both Norway and Japan to introduce doubt about the status of this population, in order to provide a basis to oppose quotas and hence use it as leverage over the USA. The UK's scientists should seek to resolve uncertainly about the bowhead population and oppose politically motivated moves to increase it.

#### **Minke whale populations off Greenland and West Greenland population of fin whales**

Link urges the UK to insist upon the strongest possible response by the Commission (including a significant reduction of its quotas) if Greenland again fails to bring the data needed by the Scientific Committee, and has failed to address the questions and concerns raised at IWC56.

Link is deeply concerned about a series of scientific and management problems with Greenland's ASW hunts. The Scientific Committee has warned with increasing urgency since 1998 that it has inadequate information on the population status of West Greenland minke whales (last complete survey 1993) and fin whales (last complete survey 1987) to set safe quotas. If the Strike Limit Algorithm (SLA) were already in place, catch limits would have already been reduced and, in the case of fin whales, apparently reduced to zero.

Greenland has repeatedly failed to comply with the Scientific Committee's requests for telemetry tagging, collection of samples for genetic analysis and aerial cue-counting surveys. Some progress has apparently been made in conducting a full aerial photographic (not cue-counting) survey since IWC56.

93.3% of central north Atlantic minke whales (and 71.9% of all minke whales) killed in Greenland are female. This results in unknown losses of dependent calves and may affect population recruitment. The UK urged Greenland in 2004 to try to address the question of the sex bias in the

catches and urged the Scientific Committee to consider urgently the effect of this bias in catches on the dynamics of the populations involved and we request that this be followed up this year.

## **St. Vincent and the Grenadines**

Link asks the UK to encourage St Vincent to report outstanding data relating to the kill of one whale in 2003, and confirm whether any whales were killed in 2004 and 2005.

### **5.3 Revision of Schedule Paragraph 13**

The Commission revised the Schedule at IWC56, removing the requirement that meat and blubber from gray whales be used “exclusively for local consumption by the aborigines whose traditional aboriginal subsistence and cultural needs have been recognized”. During that discussion, the UK stressed the need to ensure that the products of aboriginal subsistence whaling operations are, totally or in large measure, used for the people whose needs have been acknowledged. Link urges the UK to follow up this point and request that Governments undertaking ASW report to the Commission annually on the amount (and proportion) of whale products used by those communities whose needs have been recognised and the amount (and proportion) used outside those communities.

## **6. Revised Management Scheme (RMS)**

### **6.1 RMP**

The UK and other like-minded countries should make it clear, both under this agenda item and in the RMS discussions, that no modifications to the RMP are acceptable. In particular, Norway’s continued ‘retuning’ shows that any agreement to the RMS package cannot be expected to work because the whaling nations clearly intend to modify matters that have already been agreed.

The Scientific Committee may review Norway’s proposal for a modification to the CLA this year and the UK should instruct its scientists to oppose any change.

### **6.2 Revised Management Scheme**

The pro whalers’ line is that agreement on the RMS means automatic lifting of the moratorium. We urge the UK to make clear that this is not its view and to encourage as many other Like Minded governments as possible to take the same line.

### **SDG text**

Link is concerned that the text arising from the RMS Working Group and Small Drafting Group meetings since IWC56 presents considerable problems of both a substantive and procedural nature.

Most of the provisions included in the SDG’s version of the draft RMS are vague, lack substance, leave too much to the discretion of Contracting Governments, the Secretariat or the Scientific Committee, and establish too-general requirements without properly defining the procedures that would allow their application. In all fisheries organisations, management schemes are based on very detailed requirements that limit the opportunity for interpretation.

The absence of detailed and legally sound provisions to implement the RMS, and substantive controls over whaling (including whaling under objection and scientific whaling) to enforce it, will make it impossible for the Commission to control commercial whaling if the Moratorium is lifted. For example, the SDG draft:

- Establishes a Compliance Review Committee that has no more power than the existing Infractions Sub-committee to investigate, determine and punish infractions.
- Fails to establish adequate provisions to ensure the application of the RMS to all whaling activities, i.e the draft
  - cannot adequately ensure the detection of illegal, unreported, unregulated whaling activities or detection of products coming from whales caught or obtained under the authority of non-Contracting Governments.
  - does not address vessels involved in scientific whaling;
  - does not ensure protection against reservations or objections to all or part of the RMS (Contracting Governments will be free to lodge an objection or leave the Commission and rejoin with a reservation to RMS provisions and continue to hunt whales legally)
- Fails to ensure appropriate funding of the RMS, or provide proper sanctions for non payment of RMS fees.

### **Schedule Amendments**

The Government of Japan has indicated that it will propose a Schedule amendment to Paragraph 10 under this item based on the work of the RMS Working Group and Small Drafting Group. It may also propose a related amendment under this item that would establish catch quotas to serve as trial for the observation and enforcement provisions of the RMS.

We note that voting on the RMS is likely to be procedurally complex with difficulties in determining which bit of square bracketed text should be voted on first. See Annex 2 for more details.

Link urges the UK to oppose any adoption of the RMS and any granting of quotas.

## **7. Whale Killing Methods and Associated Welfare Issues**

Those Link members whose remit extends to humane concerns are grateful to the UK for the consistently strong and high profile stance it has taken on this issue.

We urge the UK to continue its strong position on whale welfare by championing this important work. We would like to see the UK facilitate discussion and encourage participation from Likeminded countries on the important points presented in Resolution 2004-3 on whale welfare.

In line with the recommendation from Resolution 2004-3 regarding the establishment of better criteria for determining irreversible insensibility and death in harpooned whales, we would like to remind the UK of the output from two recent strandings workshops, held in the UK and in New Zealand. The workshops developed a standard protocol for collecting data from stranded cetaceans. This research should help to evaluate the most useful indicators for permanent insensibility and death, both in strandings and hunting operations. It is envisaged that this work will be developed into a collaborative project between the UK and NZ and we urge the UK to continue to champion this work.

In addition, LINK urges the UK to consider the issues of bias in the Norwegian research on whale killing and insensibility, submitted to IWC55 and recently reviewed by UK academics, who present informed opinion that calls into question the assumptions and interpretations in Dr Sri Knudsen's research.

Based on requests made in Resolution 2004-3, we would also like the UK to promote and support discussion in the WKM subgroup and in plenary on:

- the methods used to kill whales caught in nets – information should be provided to the WKM subgroup by Korea and Japan to clarify methods and times to death in these whale killing operations
- the potential for reducing struck and lost incidents
- methods of improving the efficiency of whale killing methods and of reducing times to death and other associated welfare issues.

#### Data collection form

The Secretariat has revised the whale killing data provision form and sent it to contracting governments this year. LINK hopes to see information provided that was not previously available and urges the UK to make strong representations if the following outstanding data are not provided to the WKM&AWI Working Group:

- Japan
  - data on the killing of whales in the Pacific hunt and especially sperm whales, by asking in Plenary why Japan does not provide information on sperm whales and sei whales
  - data on use of the cold harpoon (which is permitted as a secondary killing method in JARPA)
- Greenland
  - all data for each method used as well as for each hunt (two different primary killing methods are used in the West Greenland minke whale hunt and median figures may mask problems associated with a particular method)
- Iceland – all whale killing related data from its 2003 and 2004 hunt

#### **RMS requirements on welfare**

LINK commends the efforts of the UK to try and bring best possible provisions for data collection on animal welfare into the RMS and support moves to discuss any minimum standard for whale killing in the Whale Killing Methods and Associated Welfare Issues Working Group. However, we also note that data collection, in itself, does not directly address the welfare of hunted whales. Data submitted to the IWC shows that whales cannot be killed with a guaranteed 100% instantaneous death rate. There are also concerns about struck and lost animals; welfare impacts of pursuit and welfare impacts on conspecifics. Therefore we strongly urge the UK to continue to use welfare arguments as one of the central tenets of its objection to any resumption of commercial whaling when deliberating on the RMS and to remind fellow commission members of their support for addressing serious welfare concerns, including the inadequacy of IWC criteria for assessing the onset of irreversible insensitivity and death in whales, in resolution 20004-3 passed in Sorrento..

#### **8. Sanctuaries**

Sanctuaries are not new to the IWC - closed areas are provided for in the ICRW and have been part of the Convention since its inception. Link directs the UK's attention to Article V 1 (c) of the Convention which specifically states that the Commission has the power to designate sanctuaries.

Japan will propose a Schedule amendment, saying that the Southern Ocean Sanctuary is in violation of Article 5 (2), in particular the requirement that decisions be based on scientific findings, but this argument is wrong. A scientific finding that some species of whales are abundant is just as valid to justify a sanctuary as a finding that they are depleted. Indeed, the Commission's first sanctuary, which covered one quarter of the Antarctic, was set up to "safeguard a reserve supply of whales". We urge that the UK is particularly vigilant to ensure that nothing is agreed that will weaken the status of the Southern Ocean Sanctuary, now or in the future.

## **South Pacific and South Atlantic Sanctuary**

Due to the large number of countries supporting Japan, it will not be possible to gain a 3/4 majority for the SAWS. Nevertheless, Link urges the UK to strongly support the proposal by Argentina, Brazil and South Africa.

## **9. Socio-Economic Implications and Small-Type Whaling**

This was originally proposed as an 'emergency relief quota' of 50 minke whales 18 years ago and has been proposed to 18 consecutive IWC meetings. The 'needs' of these towns, if any, have now been filled twice over; first by the change in Japanese domestic law which allows whales caught in nets to be marketed and processed on shore (which is providing a substantial catch of whales, estimated at over 100 per year) and secondly by the addition of 120 whales to the JARPN II 'scientific' take caught by small type catcher boats - the same boats that were proposed to take the 'emergency relief quota'. This is now being presented as a 'test' of the RMS.

We strongly urge the UK to ensure that all Like Minded governments oppose the granting of coastal quotas either under 'emergency relief' or to 'test' the RMS.

## **10. Scientific Permits**

The JARPA II proposal, which is widely reported as calling for a doubling of minke catch and adding fin and humpback whales to the 'scientific' take will bring Japan's total kill of whales to over 1,300. In 1985, their last year of commercial whaling, Japan killed 2978 whales.

We are well aware that Japan's exploitation of Article VIII cannot be stopped by any procedural mechanism within the current Convention. Therefore we urge that the UK and other Like Minded governments oppose further progress on the RMS at least until the Article VIII loophole is closed; and call on the Government of Japan to withdraw its JARPA II proposal.

The secrecy of this proposal, requested by Japan, excludes the wider scientific community which might have valuable observations to make and runs contrary to the transparency of decision making in modern science. We urge that the UK:

- Propose or support an amendment to Rule Q of the Commission's Rules of Procedure (which requires documents submitted to the Scientific Committee be kept confidential if the proponent requests it) to exclude proposed research permits from this rule and direct the Secretariat to post all proposals for Special Permit research on the IWC's website upon receipt. [Such an amendment requires 60 days notice and so could not be voted on at this meeting.] Please recall that we also requested this last year; had it been done then this proposal would not be secret and so concealed from most of the scientific community.
- Support a resolution opposing 'scientific' whaling and, in particular reiterate the Commission's statement in 2003-2 that Special Permit whaling operations represent an act contrary to the spirit of the moratorium on commercial whaling and to the will of the Commission.
- Draw attention to the fact that, despite examining the stomach contents of thousands of whales killed in 'scientific' whaling operations, the reason that the Fisheries Agency of Japan still cannot produce evidence to support its hypothesis that whales are damaging fish stocks is because the hypothesis is wrong. In particular, the largest take, over 6000 minke whales in the Southern Ocean, has produced no fish at all since these whales feed on krill.
- Propose that the commercial sale of 'scientific' whale meat and other products is prohibited.
- Organise joint strong diplomatic actions to protest Japan's increase in whaling.

## **11. Environmental and Health Issues**

### **11.2 Habitat-related issues**

Link looks forward to the partly-NGO sponsored report of the Habitats Degradation Workshop, held intersessionally in Italy in 2004. This is the latest in a series of environmentally focused workshops held under IWC auspices and the convener and chairman should be congratulated for facilitating a meeting which brought together relevant experts from all over the world. Thanks should also be given to Austria as the primary sponsor and the NGOs concerned.

The final product from the workshop is not yet available to us, so we hesitate to give a simple welcome to its conclusions and recommendations but will update provide comments when we can.

The UK should support the watching brief that the Scientific Committee holds on noise pollution and the proposal to make seismic noise sources a special focus at the next meeting. This follows on from the very successful special workshop on noise pollution last year.

### **11.4 Health Issues**

Negative effects on human health through consumption of cetacean products are an emerging issue that the IWC is wholly competent to address. Link urges the UK to raise the significant problems that some contracting governments face in respect to the contamination of cetacean meat. These are detailed in Annex 3.

### **11.5 Other**

#### **Cetacean-fisheries Interactions**

Link urges the UK and other like-minded to take every opportunity to counteract the propaganda produced by pro-whaling nations on this issue. Note in particular the report of the intersessional meeting in 2003 which concluded that "there is currently no system for which we have suitable data or modelling approaches to be able to provide reliable quantitative management advice on the impact of cetaceans on fisheries or fisheries on cetaceans".

We urge the UK to be wary of any language in resolutions on ecosystem-based management. This term is used by the pro-whaling nations as code for predator control.

A presentation delivered at the Fourth World Fisheries Congress, May 2004, by Dr Daniel Pauly and Kristin Kaschner, Fisheries Centre, University of British Columbia Vancouver, BC, Canada, confirmed that there is very little if any truth to the marine mammal- fisheries competition theory. An abstract detailing their findings has been made available to IWC Commissioners. In short, as the current crisis of global fisheries worsens, the case has been increasingly put forward in international fora that culling marine mammals would not only resolve the problems of fisheries but also help alleviate world hunger. Pauly and Kaschner's analysis clearly shows that there is no evidence that food competition between the two is a global problem, even when the uncertainties associated with the available information are considered. Conversely, there is little basis to blame marine mammals for the crisis world fisheries are facing today. There is even less support for the suggestion that we could solve any of these urgent global problems, caused by a long history of mismanagement of fisheries, by reducing marine mammal populations.

## **12. Whale watching**

Japan and its allies have opposed the work (and existence) of the Scientific Committee's Whale Watching Subcommittee, as reflected in their latest move to remove it as a Commission agenda

item. Link urges the UK to support continued work of the IWC on whale watching, to oppose any attempts to downgrade or eliminate this work and to speak in favour of any intersessional activities recommended by the IWC. The UK should push the Secretariat to make some of its annual travel funds for Scientific Committee Invited Participants available for whale watching experts, as many have never attended the Scientific Committee due to lack of funding.

Link considers that whale watching should be managed in such a way as to minimise disruption to the critical life processes of target cetaceans, whether at individual, group or population level. Specific recommendations are set out in Annex 4.

### **13. Cooperation with other Organisations**

#### **CITES**

We note the overwhelming rejection of Japan's proposal to downlist minke whales at COP13. If Japan raises its downlisting proposal to COP13, Link urges the UK to note that it failed to gain even a simple majority (supported by 45% of Parties voting yes or no, which is the same as at the previous COP) and that the Parties resoundingly rejected its attempt to reopen debate and vote again in plenary (supported by only 30% of Parties voting yes or no).

### **14. Other Scientific Committee Activities, its Future Work plan and the Adoption of the Scientific Committee Report**

Link urges the UK to direct its Scientific Committee representatives to help prioritise benign research initiatives and research that addresses real conservation and environmental issues.

#### **14.1 Small cetaceans**

Link is increasingly concerned at the situation facing small cetaceans in Greenland. Around 600 narwhals and 600 belugas are killed annually in Greenland (plus significant numbers are stuck and lost) in unsustainable and poorly regulated hunts.

Recent surveys (e.g. NAMMCO 2004<sup>1</sup>) have shown that the population of narwhals hunted by Greenland are exclusive to its waters and that Greenland's west coast populations are much smaller than believed and are already depleted to a quarter of historical levels.

In 2004, both NAMMCO and the Joint Canada Greenland Commission on the Conservation and Management of Narwhal and Beluga (JCNCB) expressed "grave concern" about the sustainability of the narwhal hunt and urged that it be reduced to one fifth of current hunting levels (150 animals) for there to be any chance of recovery. Similarly, the beluga population in Baffin Bay hunted by Greenland is predicted to be extinct in 20 years if catches are not reduced to 150 a year. However, in June 2004, Greenland set the quota for 2005 at 300 narwhals and 320 belugas.

Link strongly urges the UK to ask the Small Cetaceans Sub Committee of the Scientific Committee to consider the impacts of Greenland's narwhal and beluga hunts.

#### **Faroes hunt**

Link asks the UK to use diplomatic channels to obtain the data from the Faroes hunts in 2004.

#### **Japanese hunts**

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<sup>1</sup> Joint Meeting of the Nammco Scientific Committee Working Group On The Population Status Of Narwhal And Beluga In The North Atlantic & Canada/Greenland Joint Commission on Conservation and Management of Narwhal and Beluga Scientific Working Group Canada. 2004

We urge the UK to express concern:

- About the continued unsustainable exploitation of coastal small cetaceans in Japan and repeated failure of the Government to provide any data that will allow the Scientific Committee to review the status of exploited populations. Furthermore, that all these hunts provide extremely polluted, and often mislabelled, products for human consumption.
- About the lack of publicly available scientific data on the Baird's beaked whale hunt, the high levels of pollutants in the meat and blubber, and the fact that this mercury-laden meat is distributed to school children in at least one subsidised school lunch programme.
- That the SC has still not been able to review the status of Dall's porpoise, despite being directed to do so by resolution in 1999; that Japan still continues this hunt, which is the largest direct hunt of any cetacean species; and that Japan has not made recent data available on its website, as it has pledged to do. We urge the UK to attempt to find these data on the website and, if unsuccessful, request that the precise location of these data be made available by the end of the meeting.

## **15. Conservation Committee**

Link applauds the efforts made by the UK and other members of the Like-minded to advance the work of the Conservation Committee. We urge the UK to support substantive proposals to allow the Conservation Committee to get down to work. In addition, we urge diplomatic activities in Iceland to pressure Iceland not to disrupt the work of the Committee once again. However, Japan remains strongly opposed to the Conservation Committee and is expected to try to eliminate it. It is essential that all Like Minded governments attend the June 13 meeting of the Conservation Committee. It is possible that Japan will reverse its tactics of 2004 and, instead of boycotting the meeting, urge its allies to attend the meeting and attempt to dictate the proceedings. We urge the UK:

- To encourage all Like Minded governments to attend the meeting of the Conservation Committee;
- To provide a voluntary Conservation Report as suggested by Brazil and Argentina.

## **Legality of the Conservation Committee**

We anticipate that some pro-whaling members may assert that the establishment of the Conservation Committee was procedurally flawed because Resolution 2003-1 did not amend the Commission's Rules of Procedure to memorialize its establishment. See Annex 5 for details.

## **17. Infractions 2003 Season**

WDCS has reviewed the reports of the Infractions Committee since 1990 and summarized the discussions and outcomes of alleged and reported infractions in Annex 6.

### **Korea**

Korean media regularly reports on availability and sources of whale meat, including illegal whaling, bycatch and stranded whales. However the number of whales caught in nets seems to be declining. A press report in May 2004 reports "that whales are so rarely spotted in the seas off Ulsan that the price of a minke whale has soared from about 30 million won last year to nearly 120 million won"<sup>2</sup>

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<sup>2</sup> [http://www.koreaherald.co.kr/SITE/data/html\\_dir/2004/05/17/200405170030.asp](http://www.koreaherald.co.kr/SITE/data/html_dir/2004/05/17/200405170030.asp)

Another article reports that “it is difficult to secure whale itself because illegal whale catching and distribution have been monitored more strictly in the lead up to the IWC meeting in Ulsan”<sup>3</sup>

An article in April 2004<sup>4</sup> reported that three spear heads were discovered in a whale which was recently found dead in a fishing net. Ulsan’s Marine Police Investigation Chief said “Whales are becoming rare, and the price is sky-rocketing. The fishing-crews are likely to be tempted for whales”.

Following Korea’s report of a harpoon strike of a minke whale to the Infractions Sub-committee in 2003, please ask Korea to provide information about the current extent of illegal whaling and enforcement efforts.

Articles published in April 2005 reported a dead minke found in a net with multiple harpoon wounds and a separate incident in which fishing crews were arrested by the coast guard for illegal whaling.

In light of these press reports and following Korea’s report of a harpoon strike of a minke whale to the Infractions Sub-committee in 2003, please ask Korea to provide information about the current extent of illegal whaling and enforcement efforts.

### **Denmark/Greenland**

Link is concerned at the increasing rate at which whales, particularly humpbacks, are caught in nets in Greenland (one in 1998 and 1999, two in 2000 and 2001 and three in 2002). They are killed and their meat distributed. In April 2004, Greenlandic press reported that a bowhead whale caught in a salmon net was shot at with rifles.

### **Japan**

Link commends the UK for taking the position that animals killed under Japan’s 2001 legislation authorising the deliberate killing of whales bycaught in fishing operations, should be reported as infractions. Link urges the UK to ask Japan in the Infractions Sub-Committee how many bycaught whales were killed in 2004 and ask Japan to report them as infractions.

### **Rules of Procedure**

Japan has submitted proposals to allow the Chair and Vice Chair of the Commission to be appointed from among the Commissioners and Alternate Commissioners. This proposal would violate the treaty which states in Article III that the Commission is composed of one member from each Contracting Government....The Commission shall elect from its own members a Chairman and Vice-Chairman ...”

## **21. NGO Participation in IWC**

Link is grateful for the UK’s support for our collective efforts to make the IWC more progressive in its treatment of NGOs. Noting that Iceland may propose a code of conduct for NGOS, WDCCS has reviewed the codes of conduct for NGOs adopted by other multilateral organizations, and will provide a copy to all Like Minded governments.

The UK should take the position that action should only be taken by the Commission against an NGO which has been convicted of an offence regarding an IWC meeting by a court having jurisdiction over its head office.

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<sup>3</sup> The Kyeongsang-il bo April 23, 2004

<sup>4</sup> The Kukmin -ilbo April 26, 2004.

## **23. Date and Place of Annual and Intersessional Meetings**

Link urges the UK and other like-minded to offer a whale-friendly venue for IWC59

**This briefing is supported by the following organisations:**

- Campaign Whale
- EIA
- Greenpeace
- IFAW
- RSPCA
- Whale and Dolphin Conservation Society
- WSPA

## Annex 1 Summary of 2004 and 2005 North Atlantic Right Whale Incidents

Compiled using data obtained from by the National Marine Fisheries Service Office of Protected Resources' Marine Mammal Health and Stranding Response Program, Northeast Regional Office, and Southeast Regional Office with Assistance from the Center for Coastal Studies and New England Aquarium

Information Current as of May 02, 2005

### Summary Table:

	Whale ID	Sex	Date	Location	Alive or Dead	Cause of Death
1	Unknown	Unknown	1/9/04	FL	Alive - Injured	N/A
2	Unknown; Stranding # EGNEFL0403	Male (calf)	2/3/04	FL	Dead	Unknown
3	1004 "Stumpy"	Female (adult; pregnant)	2/7/04	NC	Dead	Possible Ship Strike (skull fractures around the blowhole and ears, bruising around the blowhole, hemorrhage in the roof of the mouth)
4	3346 "Kingfisher"	Male	3/17/04	FL	Alive - Entangled	N/A
5	2320 "Piper"	Female	4/18/04	MA	Alive - Entangled	N/A
6	1424 (traveling with "Piper")	Unknown	4/18/04	MA	Alive-Entangled	N/A
7	3210	Unknown	5/19/04	MA	Alive-Entangled	N/A
8	1909	Female (adult; pregnant)	11/24/0 4	NC	Dead	Ship Strike
9	3314 "Yellowfin"	Unknown	12/6/04	NC	Alive - Entangled	N/A
10	Unknown	Unknown	12/9/04	MA	Dead	Carcass not retrieved*
11	3120	Unknown	12/9/04	NC	Alive – Entangled	N/A
12	1160 "Bolo"	Female (adult)	1/9/05	MA	Dead	Carcass not retrieved*
13	2143 "Lucky"	Female (adult; pregnant)	1/12/05	GA	Dead	Suspected infection from wounds obtained as a result of previous ship strike
14	2301	Female (adult)	3/3/05	VA	Dead	Entanglement
15	2425	Female (adult)	3/10/05	GA	Alive-Injured	Ship Strike
16	2617	Female (9yrs old)	4/28/05	MA	Dead	Possible ship strike-major spinal dislocation- fractured vertebrae. Bruising.

Highlighted events indicate ship strike is known or suspected resulting in the death or injury of the animal.

\*Carcass not retrieved but ship strike can not be ruled out.

## **Annex 2**

### **Voting on the RMS**

If a Schedule amendment is proposed to adopt the RMS at IWC56, LINK urges the UK to ensure that all Like Minded governments understand the rules of procedure relating to such a vote, which will inevitably involve a large number of square brackets and may involve multiple, complicated amendments to the text from the floor. An explanation of the Rules is provided. In summary:

Any vote to adopt bracketed text requires a simple majority (which has significant implications if this is held by pro-whaling nations in Ulsan). Once all disputed, bracketed text is removed, the IWC Members must vote to approve the RMS as a whole for the purpose of incorporating it into the Schedule. For this vote, a three-fourths majority is required.

However, before any votes are taken on bracketed text where multiple options exist, the Commission must determine whether bracketed text constitutes a “proposal” or an “amendment to a proposal” because, under the IWC’s Rules of Debate, voting is reversed depending on whether a “proposal” or “amendments to a proposal” is being voted on.

If the Commission decides that the draft RMS constitutes a “proposal”, then bracketed text within it constitutes an “amendment to a proposal.” In this case, the last proposal on a specific issue that resulted in bracketed text must be voted on first.

If, however, the draft RMS is characterized as a “proposal in the making”, then bracketed text would be characterized as a “proposal.” In this case, the first suggestion that resulted in bracketed text must be voted on first.

Given the long history of negotiating the RMS, the Commission may have difficulties identifying which text was offered first.

## **Annex 3 – Health issues**

### **Japan**

- Ask how the health advisory notice issued by the Japanese government in 2003 was disseminated to consumers and why its advice was restricted to bottlenose dolphins, sperm whales and pilot whales, even though other contaminated species are consumed.
- Ask the Government of Japan why, despite rejecting Norwegian and Icelandic whale blubber as too contaminated, it permits more heavily contaminated meat caught domestically to be sold to Japanese consumers, including through a public programme to stimulate consumer demand and subsidised sales to schools and hospitals.
- Request contaminant data on coastal minke whales (given the increased quota)

### **Norway**

- Norway's Food Safety Authority (NFSA) issued a notice on its website on 26 March, 2004, advising pregnant and nursing women not to eat whale meat because it can contain high levels of mercury<sup>5</sup>. Please ask Norway how, in light of this, it can justify continuing to try to export its whale meat to Japan.

### **Iceland**

- On 13 October 2003, Iceland's Directorate of Health advised pregnant and nursing women to limit their consumption of minke whale meat due to high levels of mercury and PCBs. On 23 October, an Icelandic fisheries research website reported that mercury levels had been measured in eight samples of whale meat from Iceland's 2003 scientific whaling hunt<sup>6</sup>. All the animals tested were either males or juveniles. The three animals with lowest levels were shorter than 7 metres. The average mercury content was 90µg/kg (the average mercury content by comparison in whales from the Norwegian 2002 hunt was 230µg/kg). It was also announced that 64% of the whales taken were males.
- On 9 March 2004, the Environment Minister confirmed to the Icelandic Parliament that pregnant and lactating women had been warned to limit their intake of whale meat to twice a week or less<sup>7</sup>.
- Please ask Iceland what proportion of the 2003 and 2004 hunt were juveniles; whether all whales caught were tested, and if so, what the average mercury and PCB levels were.

### **Faroe Islands**

- Note that the government of the Faroe Islands issued an advisory notice to its citizens in 1998 about consumption of contaminated whale products; ask what steps it has taken subsequent to the issuing of this notice to advise consumers about health concerns.

### **Greenland**

- Note two recent studies that express concern about levels of contaminants in 'traditional food' in Greenland. The Danish National Environmental Research Institute<sup>8</sup> found high levels of contaminants in narwhal and beluga products and noted that avoiding their liver, kidney and

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<sup>5</sup> <http://matportalen.no/Saker/1052814423.14>

<sup>6</sup> <http://www.rf.is/media/frettir/hg.pdf>

<sup>7</sup> <http://www.landlaeknir.is/template1.asp?pageid=628&nid=543>

mattak would reduce the intake of contaminants in Greenland to recommended levels and not result in any nutritional deficiencies. These findings were consistent with those of the Arctic Monitoring and Assessment Programme (AMAP) which concluded in 2003 that Greenlanders should consider changing their eating habits, to avoid possible health effects like reduced fertility and developmental problems in children. Greenland's Chief Medical Officer told BBC News Online in April 2003 that he considered the AMAP findings to be extremely worrying. Greenlanders kill around 1200 narwhals and belugas each year. Please ask if the health authorities in Greenland intend to issue health advisory notices to the public warning of the effects of consuming contaminated whale meat and urging a reduction in consumption.

We urge the UK to put on the record that the following major review papers have recently been published in international peer-reviewed scientific journals, and several others in Japanese journals. They raise considerable concerns about the impact on human health from eating contaminated cetacean products.

Endo, T; Hotta Y; Haraguchi K and Sakata, M. 2003. Mercury contamination in the red meat of whales and dolphins marketed for human consumption in Japan. *Environmental Science & Technology* **37**(12): 2681-2685.

Endo, T; Haraguchi, K; Sakata, M. 2002. Mercury and selenium concentrations in the internal organs of toothed whales and dolphins marketed for human consumption in Japan. *The Science of the Total Environment* **300**: 15-22.

Endo, T; Haraguchi, K; Cipriano, F; Simmonds, M.P; Hotta, Y; Sakata, M. 2004. Contamination by mercury and cadmium in the cetacean products from Japanese market. *Chemosphere* **54**: 1653-1662.

Simmonds, M P; Haraguchi, K; Endo, T; Cipriano, F; Palumbi, S R; Troisi, G.M. 2002. Human Health Significance of Organochlorine and Mercury Contaminants in Japanese Whale Meat. *Journal of Toxicology and Environmental Health Part A* **65**: 1211-1235.

## Annex 4 – whale watching recommendations

- Whale watching should be governed by regulations (rather than multiple voluntary codes), with appropriate permit conditions and operator training, and underpinned by monitoring and enforcement provisions. There should be flexibility to include site-specific and species-specific components;
- There is a need for improved design of impact research and increased sharing of research findings between scientists and managers. From this, the development of appropriate management tools, including the use of closures to afford cetaceans some respite from vessel attention, and permit systems to ensure that the number of vessels in any one area is not so great that it impacts upon the animals;
- There should be further impact research into the practice of swimming with cetaceans activities (particularly large cetacean species in sensitive areas) and from this, the development of appropriate prohibitions/strict regulations relating to this activity;
- Enhancing the whale watch experience through improved environmental interpretation (via training of onboard naturalists and improvements in handouts and educational materials) should be regarded as an important component of the general move to improve standards and delivery throughout the industry;
- The contribution whale watch vessels can make to data collection should be more fully appreciated and exploited;
- Data obtained from whale watching vessels and details of whale watching activities are matters of importance to the IWC. We therefore urge the UK to seek to have this information included in National Progress Reports.

## **Annex 5 – Conservation Committee**

A precedent in the Commission's records demonstrates that the IWC allows the establishment of permanent committees without concurrently amending the Rules of Procedure to provide for their role:

- 1) At the 49th Annual Meeting held in Monaco in 1997, New Zealand introduced a draft Resolution to establish the Advisory Committee. The Resolution did not provide for a formal amendment of the Rules of Procedure.
- 2) The Resolution was adopted by consensus. Following its establishment at the 1997 meeting, the Committee convened and began work.
- 3) At the 1998 meeting, the text of the Rule of Procedure establishing the Advisory Committee was read into the Commission's record.
- 4) The Secretariat did not publish the final Rule of Procedure until 2000 -- two years after it was approved and three years after the Advisory Committee was established and became operational.

Significantly, there were no objections to the procedure for the establishment of the Advisory Committee. Similarly, there is no record of any contracting government objecting to the fact that the Committee was already in existence, staffed and operating before the formal adoption of a Rule of Procedure. The fact that Japan and Norway did not object to this procedure -- and indeed took an active role in facilitating it by staffing the Committee -- would make it difficult for them to credibly argue that the same process should somehow be invalid in the context of Resolution 2003-1.

Link requests the UK to use this precedent to argue that the Conservation Committee is not procedurally flawed because the Rules of Procedure were not amended at its creation. Even though Mexico expressed a desire last year to amend the rules of procedure at this meeting, there is no precedent requiring that such action be taken at this meeting.

We recommend that although the Rules of Procedure do need to be amended, the like-minded should not attempt to amend them if they are not confident of a clear majority.

Annex 6 – Infractions. Transmission of information on reported or alleged infractions by Contracting Governments recorded in the reports of the Infractions Sub-Committee from 1991 to 2004

Infractions/Issues Raised in the Infractions Sub-Committee reports				Annual meeting													
Date	Category	Details	Country	43	44	45	46	47	48	49	50	51	52	53	54	55	56
90	illegal kill <sup>R</sup>	Kill of humpback whales	Denmark		i												
91	illegal kill <sup>A</sup>	Kill of humpback whales	Denmark		? i												
91	illegal kill <sup>R</sup>	Whale blubber found in Falkland Islands.	UK		i ?	X !											
93	illegal kill <sup>A</sup>	Sales of protected species	Japan			P	!										
92	ill. trade <sup>R</sup>	Whale meat smuggled into Japan from Taiwan	Japan			? i											
89		Request for outstanding infractions report from 1984	Peru	? X	? X	X	!										
80s		Catches over quota and “other infractions”	Norway			i											
93		Killing of a female and a calf - <i>Reported as an infraction - Dispute on definition of the word “calf” arises (IWC 46)</i>	St Vincent			P i	? X	!									
93	ill. trade <sup>A</sup>	Whale meat from Taiwan discovered in Russia en route to Japan	Russia				? i										
			Japan				? X	!									
93	ill. trade <sup>A</sup>	Seizure of whale meat at Oslo airport from a shipment to Korea	Norway				? X		? i								
			Korea				? X		!								
93		Sperm whale head washed up on Japanese shores	Japan				? X	!									
93		Falsification of catch records	Russia				? X	!									
94	ill. trade <sup>R</sup>	Transport of whale meat from Norway by Korean vessel destined for Japan	Korea					? i									
95	illegal kill <sup>R</sup>	Seizure of whale meat from illegally hunted sperm whale	Japan						i								
95	ill. trade <sup>A</sup>	Attempts to smuggle whale meat into Japan	Japan						? i								
			Norway						? i								
95		Whale meat from protected species on sale	Korea						? X	!							
95		Legalization of “assisted strandings” and of small scale off-shore whaling	Denmark						? i								
95	illegal kill <sup>A</sup>	Alleged illegal taking of a western Pacific gray whale	Japan						? X	!							
96		Status of bycatch in Rep. of Korea	Korea						? i								
96	illegal kill <sup>A</sup>	Genetic analysis of market samples of Whale meat from protected species	Japan						? i	? X	!						
96	illegal kill <sup>A</sup>	Anterior half of a gray whale that washed up on the Hokkaido coast	Japan						? i	? i	? X	? X	!				
96	ill. trade <sup>A</sup>	Seizure by in Japan of 5 tons of whale meat packed in 5 tons of fish (shipment initially originated from Norway via Korea intercepted in Japan)	Japan						? X	? X	!						
			Norway						? X	? X	!						
98	illegal kill <sup>A</sup>	Allegation of killing of a female and a calf - <i>Not reported as an infraction because of the dispute on definition of “calf”</i>	St Vincent								? X	!					
99	illegal kill <sup>A</sup>	Allegation of killing of a female and a calf - <i>Ibidem</i>	St Vincent								P	? X	!				
98	illegal kill <sup>A</sup>	Take of a Bryde whale in the course of scientific whaling	Japan								? X	!					
00	illegal kill <sup>R</sup>	Take of a Bryde whale	St Vincent									P	? i				
99	illegal kill <sup>A</sup>	Take of a Sei whale	Denmark									? i	i				
00	illegal kill <sup>A</sup>	Take of 3 northern bottlenosed whales	Denmark										? X	!			
00		Mis-labelling of whale meat in Japan	Japan										? i				
00		Sale of whale meat available in Icelandic restaurants	Iceland										? i				
00	illegal kill <sup>A</sup>	Discussion of whether new legislation on bycatch is legitimizing ‘takes’	Japan										? i	? X	? X	? X	? X
01	illegal kill <sup>A</sup>	Take of 2 killer whales	Denmark											X	X	!	
			St Vincent											X	X	!	

**Legend:**

- X No new information submitted
- i Information provided to the Infractions Sub-Committee
- ? Request for transmission of more information
- ! Request for information abandoned
- P Prematurely raised (in year infractions)



## **Annex 7: Voting Procedures for Bracketed Text in the Draft Revised Management Scheme**

Prof. Chris Wold & Alice Tumerelle\*  
May 14, 2001

### **I. Introduction**

The draft Revised Management Scheme (RMS) currently includes much text on which the parties have not agreed. The draft RMS identifies this language with bracketed text. Assuming that the IWC Members cannot reach consensus on some elements of the draft RMS, questions arise concerning the majority required to pass options presented by the bracketed text. Questions also arise concerning the order of voting on bracketed text where that text is either mutually incompatible (e.g., no observers versus observers) or one option is not as inclusive as another option (e.g., 50% observer coverage versus 100% observer coverage).

As Section II explains, a simple majority of IWC Members present and voting is required to adopt text currently bracketed. However, a three-fourths majority is necessary to adopt the entire RMS. As Section III explains, however, the order of voting is more complicated. The complexity is due to the inability to characterize the draft RMS as a "proposal" or an "amendment" to a "proposal."

### **II. A Simple Majority Is Necessary to Adopt Text Included in a Bracket**

Rule E.3 of the IWC Rules of Procedure requires a simple majority to adopt votes taken "on any matter before the Commission" except for amendments to the Schedule which require a "three-fourths majority of those casting an affirmative or negative vote."<sup>9</sup>

According to Rule E.3, a proposal to amend the Schedule must "contain the text of the regulations proposed to amend the Schedule." A proposal failing to contain the text of regulations can be adopted by simple majority except if it "would commit the Commission to amend the Schedule in the future." A proposal committing the Commission to amend the Schedule in the future can neither be put to vote or adopted.

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\* Chris Wold, Clinical Professor & Director, International Environmental Law Project (IELP), Northwestern School of Law of Lewis & Clark College. Alice Tumerelle, attorney & Law Clerk, IELP.

<sup>9</sup>Rule E.3 of the IWC Rules of Procedure provides:

(a) Where a vote is taken on any matter before the Commission, a simple majority of those casting an affirmative or negative vote shall be decisive, except that a three-fourths majority of those casting an affirmative or negative vote shall be required for action in pursuance of Article V of the Convention [amendment to the Schedule].

(b) Action in pursuance of Article V shall contain the text of the regulations proposed to amend the Schedule. A proposal that does not contain such regulatory text does not constitute an amendment to the Schedule and therefore requires only a simple majority vote. A proposal that does not contain such regulatory text to revise the Schedule but would commit the Commission to amend the Schedule in the future can neither be put to vote nor adopted.

In addition, at meetings of committees appointed by the Commission, a “simple majority of those casting an affirmative or negative vote” is sufficient for the adoption of decisions. Rule E.3(c) provides:

At meetings of committees appointed by the Commission, a simple majority of those casting an affirmative or negative vote shall also be decisive. The committee shall report to the Commission if the decision has been arrived at a result of the vote.

To the extent that votes on bracketed text occur in the RMS Working Group, any vote to adopt text will require a simple majority. Even if the vote is removed to plenary, a vote to adopt particular text within the draft RMS will require a simple majority. However, once all disputed, bracketed is removed and the IWC Members vote to approve the RMS as a whole for the purpose of incorporating it into the Schedule, a three-fourths majority is required.

### **III. The Order of Voting on Bracketed Text in the Draft RMS**

The opposing views concerning several provisions of the draft RMS seem to assure that IWC Members will not reach consensus on all language within the draft RMS. At some point, Members will vote on different approaches to specific aspects of the RMS. Because the order of voting on alternative proposals can be decisive, the IWC members must determine the order of voting before any votes are taken to ensure fair and consistent voting on disputed, bracketed text.

The order of voting on bracketed text will be determined based on whether the draft RMS constitutes a “proposal” or a proposal that the IWC members are drafting. The proper characterization of the RMS will then determine whether bracketed text constitutes a “proposal” or an “amendment to a proposal.” Answering these questions is critical because the order of voting under the IWC Rules of Debate is reversed depending on whether the bracketed text constitutes a proposal and amendments to proposals.

#### **A. The Order of Voting on “Amendments to a Proposal”**

According to Rule E.2 of the IWC Rules of Debate, a motion is an amendment to a proposal “if it merely adds to, deletes or revises part of that proposal.” With respect to amendments to a proposal, Rule E.2 provides that an amendment must be voted on before the proposal itself.<sup>10</sup> Where two or more amendments are moved to a proposal, the Commission must vote first on the last amendment moved. However, where the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to a vote.<sup>11</sup> Although logically it makes sense to vote first on the

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<sup>10</sup>This is consistent with other treaties and common sense. *See, e.g.*, Northeast Atlantic Fisheries Commission, Rules of Procedure, Rule 24 available at <http://www.neafc.org>, Commission for the Conservation of Southern Bluefin Tuna, Rules of Procedure, Rule 44 (providing that: “An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.”). This rule must be understood properly because it is often misapplied. If an amendment is adopted, the original proposal is void – it is replaced by the amended proposal. In essence, the original proposal has been rejected in favor of the amended proposal. *See* Commission for the Conservation of Antarctic Living Marine Resources, Rules of Procedure, Rule 23 (“As a general rule proposals which have been rejected may not be reconsidered until the next meeting of the Commission.”).

<sup>11</sup>Rule E.2 of the IWC Rules of Debate provides:

amendment that necessarily implies the rejection of all other amendments, Rule E.2 does not require that. Instead, Rule E.2 adheres to the principle that the “the last shall be first”: the last amendment moved must be voted on first.

### B. The Order of Voting on “Proposals”

In direct contrast, Rule E.3 provides that if two or more proposals (as opposed to amendments to a proposal) relate to the same question, the Commission shall, unless it otherwise decides, vote on the proposals in the order in which they have been submitted. The Commission may, after voting on a proposal, decide whether to vote on the next proposal.<sup>12</sup> This rule is similar to that of other treaties.<sup>13</sup>

### C. Discussion

Again, the question that the Members must answer is whether the draft RMS constitutes a proposal or a “proposal-in-the-making.” If the draft RMS constitutes a proposal, then bracketed text is properly characterized as an “amendment to a proposal.” In this case, the last proposal on a specific issue that resulted in bracketed text must be voted on first.

If, however, the draft RMS is better characterized as a proposal that the members are currently creating, then bracketed text should be characterized as a “proposal.” In this case, the first suggestion that resulted in bracketed text must be voted on first.

Given the long history of negotiating the RMS, the Members may have difficulties identifying which text was offered first. If that is true, the Members have the opportunity to create additional rules. The Rules of Debate already allow the IWC members to establish different rules for voting on proposals. Presumably they could also create a rule that grants them the power to adopt different rules for voting on amendments to proposals.

The Commission for the Conservation of Southern Bluefin Tuna and the Conference of the Parties to the Convention on International Trade in Endangered Species (CITES) provide an alternative. In these meetings, the parties first vote on the amendment ***furthest removed in substance from the original proposal***, then on the amendment next furthest removed from the proposal until all amendments have been put to a vote.<sup>14</sup> The advantage of this voting procedure is that it may eliminate the need to address

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When the amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Commission shall first vote on the last amendment moved and then on the next to last, and so on until all amendments have been put to the vote. When, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes or revises part of that proposal”.

<sup>12</sup>Rule E.3 of the IWC Rules of Debate provide:

If two or more proposals relate to the same question, the Commission shall, unless it otherwise decides, vote on the proposals in the order in which they have been submitted. The Commission may, after voting on a proposal, decide whether to vote on the next proposal.

<sup>13</sup>For example, Rule 41 of the Rules of Procedure for the Commission on the Conservation of Southern Bluefin Tuna provides:

If two or more proposals relate to the same question, the Conference of the Parties, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted. The Conference of the Parties may, after each vote on a proposal, decide whether to vote on the next proposal.

<sup>14</sup>*See. e.g., CCSBT Rules of Procedure, Rule 45:*

subsequent amendments to a proposal. That is, the amendment furthest removed from the original proposal may implicitly reject all other amendments. The disadvantage is that it may be difficult to determine which amendment is, in fact, furthest removed from the original proposal.

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If two or more amendments are moved to a proposal, the Conference of the Parties shall first vote on the amendment furthest removed in substance from the original proposal, then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. The President shall determine the order of voting on the amendments under this rule.