

## Annex 1 — Comparison of Revised Draft of Schedule Chapter V, Supervision and Control with IWC/RMS 2 rev and MCS Provisions of Fisheries Organizations

EDG Proposal	Comparison with IWC/RMS 2 rev	Comparison with Fisheries Organizations
<p><b>Statement of principle</b></p> <p>1. (a). The purpose of this Chapter is to set out the basic requirements for a robust supervision and control scheme to ensure compliance with the provisions of the Convention.</p> <p><i>[(b). No provision of this Chapter is intended to, nor shall it be deemed or interpreted to be, a restriction on any legitimate trade in any whale product.]</i></p>	<p>Paragraph (a), a new provision, is a statement of purpose similar to those found in many declarations, treaties, and other international documents. Importantly, it emphasizes that the purpose of Chapter V is “supervision and control,” not only “inspection and observation.”</p> <p>Paragraph (b), a new provision, may impede the Commission’s ability to use trade restrictions and landing and transshipment bans to enforce conservation and management measures.</p>	<p><b>Potentially Incompatible</b></p> <p>Paragraph (b) is <b>potentially incompatible</b> to the extent that it prevents the Contracting Governments from using trade restrictions and landing and transshipment bans to enforce conservation and management measures. These measures have become common in fisheries organizations, including CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NEAFC, and WCPOC.</p>
<p>2. Whales may only be taken by vessels authorised by Contracting Governments. Primary processing may only be undertaken on vessels or at points of landing authorised by Contracting Governments. <i>[Secondary processing may only take place at processing plants authorised by Contracting Governments.]</i></p>	<p><b>No change from IWC/53/RMS 2 rev.</b></p>	<p>This provision is <b>compatible</b> with other international fisheries organizations. However, the Commission may wish to define “secondary processing facilities” to clarify which types of facilities are covered by this provision.</p>

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<p>3. At least 3 months before the start of the season, Contracting Governments shall inform the Secretariat of the following information necessary for implementation of the International Observation Scheme (Annex A to this Schedule):</p> <ul style="list-style-type: none"> <li>(a) the location of each point of landing/primary processing site and the authorised dates of operation;</li> <li>(b) the name or identifying code of each vessel, and its vessel category (as recognised in the International Observer Scheme), home port and authorised dates of operation;</li> <li>(c) <i>[the names of authorised secondary processing plants]</i></li> </ul> <p>Such information shall: remain confidential; is to be made available to Contracting Governments on request; and is to be used only in conjunction with the international observer scheme. Note 7: The EDG <b>agreed</b> that there may be a need to consider other issues in this paragraph, including flags of convenience</p>	<p><b>Vessel Registration</b></p> <p>The EDG draft now requires information relating to vessel registration to be submitted to the Secretariat at least three months prior to the start of the season. This requirement should help ensure that observers are available for a whaling cruise.</p> <p>However, it would be helpful to include information from Paragraph E of Chapter VI <i>before</i> a vessel begins whaling. Paragraph E requires Contracting Governments to report the name and gross tonnage of each factory ship, the list of land stations in operation during the period concerned, and the dates and number of days that a catcher vessel expects to operate. In particular, it would be useful to know the date of departure for a whaling vessel to ensure that observers are ready at the time needed.</p> <p>To deter the use of flags of convenience, the IWC may want to require that Contracting Governments also provide the names of the vessel owners, as well as any previous flags of a vessel, to the Secretariat.</p>	<p><b>Vessel Registration</b></p> <p><b>Compatible Provisions:</b> The requirement that vessels register with national authorities, which must transmit registrations to the Secretariat, is consistent with international fisheries organizations (CCAMLR, AIDCP/IATTC, ICCAT, IOTC (greater than 24m in length), NAFO (greater than 50 gross tons), FFA, WCPOC, NEAFC).</p> <p><b>Incompatible Provisions:</b></p> <ol style="list-style-type: none"> <li>1. Other fisheries organizations require vessels to meet certain conditions, such as operation of a VMS system, <i>before</i> a national authority may license a vessel (CCAMLR, FFA).</li> <li>2. In addition to the information required by this provision, other fisheries organizations also require a national authority to report each vessel's owner, area of operation, gear type, and species targeted before fishing commences (CCAMLR, IATTC, ICCAT, NAFO, WCPOC, FAO). Some, but not all, of this information is included in paragraph E of Appendix 6, Revised Draft of Schedule VI, Information Required.</li> </ol>

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<p>4. All whaling vessels engaged in whaling operations shall be equipped with an autonomous system which records data that assist in ensuring compliance with the Schedule, as detailed in the International Observer Scheme (Annex A). Note 8: The EDG <b>agreed</b> that there should be discussion at IWC/54 on whether all vessels should be required to have VMS, rather than just those without international observers on board.</p> <p>Contracting Governments shall supply copies of the data at the end of each season in a format specified by the Secretariat. Should the Commission deem necessary, it may request that the data be supplied to the Secretariat more frequently.</p> <p>In addition, data from certain vessels shall be transmitted in real time to the appropriate international observer, as detailed in Annex A.</p>	<p><b>Vessel Monitoring Systems (VMS)</b></p> <p>This paragraph, in conjunction with the International Observer Scheme, contemplates the use of VMS on only certain vessels. In contrast, IWC/53/RMS 2 rev allowed the possibility for VMS on all vessels.</p> <p>In addition, as the comparison with other fisheries organizations makes clear, the EDG proposal omits several important features of effective VMS.</p> <p>Note 8 reports that the EDG agreed to discuss whether VMS should be required for all vessels. As the experience in other fisheries organizations indicates, all vessels should have VMS to verify accurately and frequently the location of each vessel. Effectively deployed VMS ensures that vessels operate in designated areas. This will be very important for the IWC because quotas will be granted for particular stocks in particular sectors. VMS will ensure that vessels fish in proper sectors.</p>	<p><b>Compatible Provisions:</b> All fisheries organizations that require VMS require the system to be autonomous (CCAMLR, AIDCP/IATTC, ICCAT, NAFO, FFA, NEAFC, WCPOC).</p> <p><b>Incompatible Provisions:</b></p> <ol style="list-style-type: none"> <li>1. <b>Vessel Coverage.</b> Other fisheries organizations require VMS for <i>all</i> vessels (CCAMLR, NAFO, FFA, WCPOC); all vessels greater than 24 meters (ICCAT); all vessels fishing in the convention area on the high seas (NEAFC).</li> <li>2. <b>Relation to Observers.</b> No fisheries organizations exempt vessels with observers from VMS requirements.</li> <li>3. <b>Satellite based</b> (CCAMLR, ICCAT, NAFO, WCPOC, NEAFC).</li> <li>4. <b>Tamper proof</b> (CCAMLR, ICCAT, FFA) or prohibition against tampering with (FFA).</li> <li>5. <b>Real-time Reporting.</b> Other fisheries organizations require real-time or near real-time reporting (CCAMLR, ICCAT, WCPOC).</li> <li>6. <b>Frequency of reports to national authority.</b> The IWC proposal does not include a provision that states how frequently a vessel must submit data to the national authority. While no specific time period has been established, other fisheries organizations require reporting frequently: continuous (NEAFC); every four hours (CCAMLR); every six hours (NAFO); eight hours or shorter (FFA).</li> <li>7. <b>Frequency of Reports to Secretariat.</b> The EDG proposal for the national authorities to report at the end of the season is inconsistent with provisions of other fisheries organizations to report to the Secretariat within 2 working days of receipt of information (CCAMLR); within 24 hours (NAFO, NEAFC).</li> <li>8. <b>Alternate VMS in case of malfunction.</b> The EDG proposal fails to include provisions that require alternative means of communicating and immediate repair of VMS if a VMS malfunctions, like CCAMLR, NAFO, FFA, and NEAFC.</li> <li>9. <b>Information transmitted.</b> The EDG proposal does not specify the information that the VMS must transmit, such as vessel position, vessel name, date, and time (CCAMLR, ICCAT, NAFO, FFA, NEAFC).</li> </ol>

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<p><i>[5. (a) Contracting Governments shall maintain a tissue sample from each whale killed or otherwise obtained within its jurisdiction and that are destined for the market. The Contracting Government shall arrange for genetic analysis of each such sample according to the specifications drawn up by the Scientific Committee so that individual and species identity can be determined with a high degree of probability, and a copy of the resulting DNA profile shall be forwarded to the Commission within six months of the date of sampling for inclusion in a central diagnostic register of DNA profiles. The register shall be available to the Scientific Committee and accredited scientists according to the Committee's Rules of Procedure.] [Contracting Governments which may not assume the costs of genetic analysis may/shall use the central archive of DNA analysis placed by the RMS to comply.]</i></p>	<p><b>No change from IWC/53/RMS 2 rev.</b></p> <p>The use of DNA profiling may be an important component for ensuring that legally harvested whales enter the market.</p> <p>The paragraph, however, appears to exclude whales caught outside a Contracting Government's jurisdiction, such as those caught on the high seas. The use of "jurisdiction" alone usually refers to the geographic area over which a State exercises sovereign rights, such as its Exclusive Economic Zone. This exercise of sovereign rights, of course, does not apply on the high seas. The DNA profiling system would be meaningless, however, if whales caught on the high seas were excluded. To ensure that the DNA profile is complete and includes all whales caught, this paragraph should use the phrase <b>"jurisdiction and control."</b> The use of "control" includes situations in which a State exercises regulatory authority, such as with respect to a State's flag vessels fishing on the high seas or in another State's jurisdiction.</p>	<p>No comparable provisions in other international fisheries organizations.</p>
<p><i>[(b) The Commission shall arrange for the establishment of a central archive of tissue samples maintained according to specifications drawn up by the Scientific Committee. A sub-sample from each tissue sample maintained according to sub-paragraph (a) shall be submitted to the central archive within six months of the date of sampling, or the date of notification of establishment of the archive, whichever is the later. The means of transportation of samples shall be such that they ensure proper preservation. The Commission shall arrange for further genetic analysis of the archived samples based on advice from the Scientific Committee, including where appropriate the generation of additional DNA profiles for inclusion in the Commission's register.]</i></p>	<p><b>No change from IWC/53/RMS 2 rev.</b></p>	<p>No comparable provisions in other international fisheries organizations.</p>

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<p><i>[(c) After January 1st, 2004, any commercially available perishable whale products that have not been derived from whales whose DNA profile has been registered with the Commission by this date or within six months of capture, whichever is the later, shall be deemed to have been derived from whales not obtained in accordance with this Schedule.]</i></p>	<p>This provision clarifies a similar provision in IWC/53/RMS 2 rev. It creates a presumption that commercially available perishable whale products derive from illegally obtained whales, if the DNA from those products is not in the DNA profile. Thus, this provision can be an important and powerful enforcement tool, provided that an effective compliance regime is created.</p> <p>However, the provision appears to overlook the fact that much whale meat is canned and processed. It is not clear if the provision intended to exclude such products from the presumption of illegality. Processed products may need to be treated differently because heating associated with processing may damage DNA.</p>	<p>No comparable provisions in other international fisheries organization.</p>
<p><b>National Inspection Schemes</b></p> <p>6. Each Contracting Government under whose jurisdiction whaling operations for commercial purposes are carried out, shall have in place appropriate enforcement legislation and effective administrative frameworks to ensure that the requirements of the Revised Management Scheme are fully met. Copies of the relevant laws and regulations shall be transmitted to the Commission.</p>	<p><b>No change from IWC/53/RMS 2 rev.</b></p>	<p><b>Inspections</b></p> <p><b>Compatible Provisions:</b> This provision is comparable to those found in other fisheries organizations.</p>

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<p>7. National inspection schemes shall at least include:</p> <ul style="list-style-type: none"> <li>(a) provisions ensuring appropriate inspection during the season on each whaling vessel and at each point of landing/primary processing site;</li> <li>(b) provisions authorising national inspectors to check and ensure compliance with the provisions of the Convention and national regulatory measures.</li> </ul>	<p><b>Inspections.</b></p> <p>This provision adds the phrase “primary processing site” to subparagraph (a).</p> <p>The comparison with other fisheries organizations makes clear that much more is needed to create an effective inspection scheme.</p> <p>In addition, Chapter 1 of the Schedule should include a definition of “primary processing site” or “primary processing” to distinguish it from “secondary processing” (<i>see Paragraph 1 of the EDG draft</i>).</p>	<p><b>Inspections.</b></p> <p><b>Incompatible Provisions:</b></p> <p>This provision is incompatible with other fisheries organizations, because it lacks the specificity of similar provisions found in other fisheries organizations. For example, other fisheries organizations include the following provisions:</p> <ol style="list-style-type: none"> <li>1. <b>Scope of Inspection.</b> Fisheries organizations grant the inspector the right to inspect the catch, logbook, gear, and vessel registration (CCAMLR, ICCAT, NAFO, NEAFC, WCPOC, Straddling Stocks Agreement).</li> <li>2. <b>Inspector Registry.</b> Fisheries organizations require a registry of certified inspectors (CCAMLR, NAFO, NEAFC).</li> <li>3. <b>Duty to Cooperate.</b> Fisheries organizations require the master of the vessel to cooperate with the inspector and not interfere with the inspector’s work (CCAMLR, ICCAT, NAFO, NEAFC, Straddling Stocks Agreement).</li> <li>4. <b>Inspector’s Report.</b> Fisheries organizations require the inspector to complete an inspection report (CCAMLR, ICCAT, NAFO, NEAFC).</li> <li>5. <b>Member’s Report.</b> Fisheries organizations require the Member country to forward the inspection report to the secretariat within a specified period of time (CCAMLR, ICCAT, NAFO, NEAFC).</li> <li>6. <b>Notification of Infraction.</b> Notification of the flag State is sometimes required in the case of a serious infraction or infringement of management measures (NAFO, NEAFC, Straddling Stocks Agreement).</li> <li>7. <b>High Seas Inspections.</b> In addition, at least three fisheries organizations permit inspections on the high seas by non-flag states (NAFO, NEAFC, Straddling Stocks Agreement).</li> </ol>

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<p>8. National inspectors shall be appointed and paid by the Contracting Government having jurisdiction over the commercial whaling operations to be inspected and shall receive their instructions from their national authorities.</p>	<p><b>No change to IWC/53/RMS 2 rev.</b> While this provisions covers national inspection, and Paragraph 12 provides three alternatives for covering observer costs, the Commission must still choose a mechanism for funding the other costs of “Supervision and Control.”</p>	<p>Unknown, but presumably fisheries organizations require each Contracting Party to pay the costs of their own national inspections programs.</p>
<p><b>International Observer Scheme</b></p> <p>9. For the purpose of monitoring compliance with the provisions of the Convention pertaining to commercial whaling operations, the Commission shall appoint observers to whaling operations in accordance with the International Observer Scheme (Annex A).</p>	<p>This paragraph eliminates much of the bracketed text and now simply requires the Commission to appoint observers. This is positive step forward. However, as the comments to Annex A of the Schedule emphasize, some of the disagreements concerning the observer program have been transferred to the International Observer Scheme.</p> <p>Also, it may be clearer to put all provisions relating to the observer scheme in one document. It is not clear why four paragraphs are included in this section of the Schedule and three pages are included in Annex A to the Schedule.</p>	<p><b>Compatible Provisions:</b></p> <ol style="list-style-type: none"> <li>1. <b>International Observer Program.</b> Some fisheries organizations have international observer programs (AIDCP/IATTC, WCPOC). Others use regional (FFA), bilateral (CCAMLR), or national (CCSBT, NAFO) observer programs.</li> <li>2. <b>Observer Duties.</b> The duties of observers, as listed in Annex A, are comparable with those of other fisheries organizations (CCAMLR, AIDCP/IATTC, NAFO, FFA)</li> </ol> <p><b>Against the Trend</b></p> <ol style="list-style-type: none"> <li>1. <b>Maximum Observer Coverage.</b> Annex A contemplates less than 100% observer coverage. The trend in fisheries organizations is to maximize observer coverage. Some fisheries organizations, such as NAFO, already have 100% observer coverage. Others, such as CCAMLR, ICCAT, and AIDCP/IATTC, have 100% coverage in select fisheries.</li> </ol> <p><b>See also Comparison of The International Observer Scheme (Annex A) with Observer Programs of Other Fisheries Organizations for more information relating to observer duties and reporting requirements, found in paragraphs 8-16 of previous RMS drafts.</b></p>

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<p>10. If, through no fault of the Contracting Government or relevant whaling operation, an observer is not available, the Secretariat <i>[shall/may]</i>, on behalf of the Commission, waive the requirement for an observer to be present.</p> <p><i>[Notwithstanding the above, vessel departure, hunting or landing of whales shall neither be delayed nor prevented if, through no fault of the Contracting Government or relevant whaling operation, an observer is not available.]</i></p>	<p><b>Most of para. 8 from IWC/53/RMS 2 rev has been transferred to Annex A.</b></p> <p>This provision should identify who will make the determination as to whether a Contracting Government is at fault.</p> <p>Also, this provision must be reconciled with paragraph 2.1(4) of the International Observer Scheme, which allows any Contracting Government to veto any candidate. This provision should make clear that a Contracting Government that vetoes all observers is “at fault.”</p>	<p><b>Incompatible Provisions:</b></p> <ol style="list-style-type: none"> <li>1. <b>Waiver of Observer.</b> The author has found no provision in other fisheries organizations that allows for the waiver of an observer requirement.</li> <li>2. <b>Delay of voyage.</b> The author has found no provision in other fisheries organizations that allow a vessel to depart without an observer to avoid delaying the voyage. If such a provision is included in the RMS, the RMS must also include a requirement for the Contracting Government to notify the Secretariat far enough in advance to ensure that an observer can be found in a timely manner.</li> </ol>
<p>11. The Secretariat shall write an annual report for review by the Commission about the functioning of the international observation scheme. The Secretariat shall also provide a list of all alleged infractions. They shall be considered by the Compliance Review Committee.</p>	<p>This new provision creates the sensible requirement that the Secretariat report to the Commission on the functioning of the observer scheme.</p>	<p><b>Compatible Provisions:</b></p> <ol style="list-style-type: none"> <li>1. Other fisheries organizations also require the Secretariat to report alleged infractions noted by observers to the relevant body or a Member government (CCAMLR, AIDCP/IATTC, ICCAT, NAFO).</li> </ol>



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<p>12. Observers' salaries and expenses shall be paid by the Commission.</p> <p><i>[These costs shall be recovered exclusively from the Contracting Government under whose jurisdiction whaling operations are carried out.]</i></p> <p>or</p> <p><i>[The Commission shall recover [these and][all] other costs resulting from the supervision and control scheme through a factor in the membership contributions assessed from Contracting Governments [under whose jurisdiction whaling operations are carried out].</i></p> <p>or</p> <p><i>[These and other costs and expenditure resulting from this supervision and control scheme shall be recovered in the following manner –</i></p> <p><i>(a) core administrative expenditure (including, but not limited to, core Secretariat salaries and expenses) associated with this supervision and control scheme shall be paid by the Commission;</i></p> <p><i>(b) operating expenditure for this supervision and control scheme (including, but not limited to, recruitment costs, observers' salaries and expenses, other travel and accommodation expenses, third party contract costs and an appropriate annual share of capital expenditure as set out in subparagraph (c) of this paragraph) shall be recovered exclusively from the Contracting Governments under whose jurisdiction whaling operations are carried out; and</i></p> <p><i>(c) capital expenditure (including but not limited to computer equipment and software costs and vessel monitoring systems) shall be amortised in the manner required by the current UK GAAP and recovered over time, on an annual basis, as part of operating expenditure, as set out in subparagraph (b) of this paragraph.]</i></p>	<p>Alternative 3 is a new proposal not included in IWC/53/RMS 2 rev. As the comments relating to other fisheries organizations indicate, it is an innovative proposal to fund the costs of the observer program.</p>	<p><b>Alternative 3: Compatible</b></p> <p><b>Alternative 3</b>, based on a sharing of costs, is <b>compatible</b> with other structures for paying costs of the observer program. In CCAMLR, the “designating” and “receiving” countries share costs. In the AIDCP/IATTC, vessel operators pay 70% of the costs and members pay 30%. Moreover, in all fisheries organizations, the vessel operator and flag State pay for equipment. Alternative 3, which allows the Commission to incur equipment costs and allow repayment over time by the flag State of a whaling vessel, provides an innovative means for paying observer costs.</p> <p><b>Alternative 2: Incompatible</b></p> <p>The proposed fee structure of <b>Alternative 2</b>, which requires recovery of <i>all</i> costs through a factor in IWC contributions, departs from the user pays principle, which states that those who use a resource pay the costs of implementing an enforcement regime. The principle is similar to the polluter pays principle in which the polluter generally bears the burden of paying for pollution prevention and pollution clean up costs. As such, Alternative 2 is and is largely <b>incompatible</b> with other fisheries organizations. It can be made compatible by weighting contributions according to use of the resource.</p> <p><b>Alternative 1: Difficult to Categorize</b></p> <p><b>Alternative 1</b> is difficult to categorize as compatible or incompatible because of the nature of the IWC. Unlike other fisheries organizations, the IWC has a substantial number of Members that do not exploit whales by lethal means. In contrast, when other fisheries organizations share costs among different members, they share costs among members all of whom exploit the resource. Nonetheless, whales, like fish, represent a global resource. As such, IWC Members should probably share some costs, with the majority of costs paid by those that exploit the resource by lethal means.</p>

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<p><b>[Verification of catch data]</b></p> <p><i>13. (a) The Commission shall operate a standardised system for the collection of catch data. This shall certify that all products derived from whales taken or collected under the authority of a Contracting Government are derived solely from whales taken in accordance with the provisions of the Schedule or from authorised utilisation of bycatch or stranding. This scheme shall include a unique identifier for each product derived from each animal and shall provide information on:</i></p> <ul style="list-style-type: none"> <li>(i) <i>date and location of catch, bycatch or stranding;</i></li> <li>(ii) <i>species;</i></li> <li>(iii) <i>national issuing authority of authorisations for catch or utilisation;</i></li> <li>(iv) <i>licence number for that authorisation; and, in the case of catches:</i></li> <li>(v) <i>place and date of landing/transshipment</i></li> <li>(vi) <i>vessel identification.</i></li> </ul> <p><i>(b) Each year by 31st March, any Contracting Government under whose jurisdiction there are significant markets for perishable whale products shall provide to the Secretariat information about the nature, quantity and distribution of the whale products offered in those markets under its jurisdiction, . This information shall be provided in a format determined by the Commission such that it will be able to determine the necessary scope, frequency and mode of analysis of the surveys referred to in sub-paragraph (c) of this Paragraph 18. If a Contracting Government fails to provide such information, the Commission will determine the scope, frequency and mode of analysis based on the best available information. The results of these surveys shall be reported to the Secretariat and reviewed by the appropriate body or bodies of the Commission.</i></p> <p>[paragraphs (c) and (d) next page.]</p>	<p>This paragraph creates the framework for a catch documentation scheme. It also brings by-catch and strandings within its scope, a positive development.</p> <p>However, it lacks sufficient detail and fails to develop aspects of catch documentation that are common in fisheries organizations. For example, the Commission must still create at a later date the format for reporting information on nature, quantity and distribution of whale products offered for sale (Paragraph (b)). In contrast, other fisheries organizations have created very detailed provisions for reporting such information and have established catch documentation forms. The Commission must also create, at a later date, procedures to monitor the origins of perishable whale product sold or offered for sale (Paragraph (c)). Because these important procedures may determine the effectiveness of a compliance regime, these issues should be resolved now.</p>	<p><b>Compatible Provisions:</b></p> <ol style="list-style-type: none"> <li>Paragraph (a) is consistent with other fisheries agreements in that it creates an international system for verifying catch data.</li> <li>It is consistent with other fisheries agreements by requiring a unique identifier for products.</li> <li>It is consistent with other fisheries agreements by requiring information relating to the date and location of the catch, the species caught, and other information listed in subparagraphs.</li> </ol> <p><b>Incompatible Provisions:</b></p> <p>Other fisheries organizations require the following components of their catch document schemes:</p> <ol style="list-style-type: none"> <li><b>Catch form.</b> Other fisheries organizations require the vessel captain to complete a catch form at the time of the catch (CCAMLR, AIDCP/IATTC).</li> <li><b>Validation of Import and Export.</b> Fisheries organizations require the flag State/fishing entity to validate the catch document at the time of import and export (CCAMLR, CCSBT, AIDCP/IATTC, ICCAT, IOTC).</li> <li><b>Validation of Re-export.</b> Other fisheries organizations require validation of the catch document upon re-export (CCSBT, ICCAT, IOTC).</li> <li><b>Standardized catch document form</b> Other fisheries organizations have adopted a standardized catch document form for consistency (CCAMLR, CCSBT, IOTC).</li> <li><b>Distribution of Catch Documents.</b> Other fisheries organizations the secretariat to distribute the catch documents to national authorities (CCAMLR, AIDCP/IATTC).</li> </ol>

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<p><i>(c) The Commission shall establish procedures to monitor the origins of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments. These procedures shall confirm whether the whale products are derived only from individual animals caught in accordance with the provisions of the Schedule, from individual animals that die as a result of by-catch, from strandings or from stockpiles of frozen meat. The overall purpose of these procedures shall be to help to confirm that whaling only takes place in accordance with the provisions of the Schedule, and that total human-caused mortalities are accounted for in the calculation of catch limits under the Revised Management Procedure, as specified in Chapter III, paragraph 10.</i></p> <p><i>(d) Pursuant to the requirements of this Paragraph 18, the Commission shall arrange for genetic surveys of perishable whale products sold and/or offered for sale in wholesale and retail markets under the jurisdiction of Contracting Governments to be conducted. These analyses shall involve comparisons of the DNA profiles of the market samples with those in the diagnostic DNA register as described in Paragraph 3 in order to determine which of the sampled products arise from individual animals caught in accordance with the provisions of the Schedule. For those samples that can not be identified as having been derived from animals caught in accordance with the Schedule, the probable species and stock origins shall be determined so far as is possible.]</i></p>	<p><i>See comments on previous page.</i></p>	<p><i>See comments on previous page.</i></p>

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<p><i>[Oversight]</i></p> <p><i>[19. (a) The Commission shall [establish a Compliance Review Committee to review and report on the compliance of all whaling operations with the provisions of the Schedule and penalties for infractions thereof].</i></p> <p><i>[(b) The Compliance Review Committee shall:</i></p> <ul style="list-style-type: none"> <li><i>(i) review: (a) infraction reports from Contracting Governments; and (b) the annual report of the functioning of the international observer scheme, including any alleged infractions, for the most recent completed whaling season;</i></li> <li><i>(ii) review other reports submitted by Contracting Governments on matters relevant to the Committee, including alleged infractions;</i></li> <li><i>(iii) compare the information in (i) and (ii) above and identify any disagreement in the details of an alleged infraction;</i></li> <li><i>(iv) report its view as to whether an alleged infraction is a violation(s) of the provisions of the Schedule;</i></li> <li><i>(v) review action(s) taken by a Contracting Government in response to violation(s) of the provisions of the Schedule identified above;</i></li> <li><i>(vi) review the actions taken, including progress made, by Contracting Governments in response to previous violations considered by the Commission;</i></li> <li><i>(vii) recommend to the Commission actions to be taken to improve compliance with the provisions of the Schedule;</i></li> <li><i>(viii) submit a report to the Commission on its deliberations and recommendations.</i></li> </ul> <p><i>[(c)The Compliance Review Committee shall act in accordance with the principles of fairness, transparency and due process in making any final deliberations and recommendations in relation to any alleged infraction, breach of the Schedule or other relevant requirements of the Commission.]</i></p>	<p>The creation of the Compliance Review Committee, with the clear terms of reference, as included in Paragraph 19 of the EDG Draft, would assist in the implementation and enforcement of the IWC’s Supervision and Control regime. The EDG, however, would probably function better as a smaller committee, rather than be open to all Contracting Governments. The Standing Committee of CITES, which addresses CITES compliance issues, currently includes 16 of 154 CITES Parties. Its members are chosen based on equitable geographic representation. Similarly, the Montreal Protocol’s Implementation Committee includes representatives from 10 of the 183 Parties to the Montreal Protocol based on equitable geographic representation.</p> <p>While the Compliance Review Committee is an important step forward, the compliance regime as a whole must define key terms, such as “infraction.” IWC Members have not agreed on what constitutes an infraction. The work of the Compliance Review Committee will be undermined if the IWC cannot agree on a definition even after the Compliance Review Committee has made recommendations concerning what it believes to be an infraction.</p>	<p><b>Compatible Provisions:</b></p> <p>The proposed text is <b>compatible</b> with compliance committees of other fisheries organizations in several respects:</p> <ol style="list-style-type: none"> <li>1. This proposed text establishes a committee to review infractions, report to the Commission, and make recommendations on actions to be taken to improve compliance.</li> <li>2. It delegates authority to the Commission to take any action with respect to infractions.</li> </ol> <p><b>Breaking New Ground:</b></p> <p>As the report of the meeting notes, the AIDCP includes observers on its Implementation Review Committee. To date, other fisheries organizations do not do so. However, the trend in international law and in international fisheries law is towards greater openness, transparency, and participation. For example, Article 7.1.9 of the FAO Code of Conduct for Responsible Fisheries calls on States and subregional or regional fisheries management organizations and arrangements to <i>ensure transparency in the mechanism for fisheries management and in the related decision-making process.</i>” Article 6.13 of the FAO Code calls on nations to “ensure that decision making processes are transparent and achieve timely solutions to urgent matters” and facilitate consultation and <i>effective participation</i> with industry, fishworkers, environmental, and other interested organizations. In addition, Principle 10 of the Rio Declaration states: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.” Agenda 21 of the UN Conference on Environment and Development notes that broad public participation in the decision making process related to resource management is to be encouraged.</p>

EDG Proposal	Comparison with IWC/RMS 2 rev	Comparison with Fisheries Organizations
<p><i>[(d) Representatives from at least two, but not more than [x], non-governmental organisations (representing environmental groups and the whaling industry) shall be entitled to attend the Committee as non-voting members, following a selection process agreed by the Commission.]</i></p> <p><i>[(e) In the event of an infraction the relevant catch limit will automatically revert to zero unless and until otherwise determined by the Commission on the advice of the Compliance Review Committee.]</i></p>	<p><i>See comments on previous page.</i></p>	<p><i>See comments on previous page.</i></p>