

Annex 2 — Comparison of Annex A to the Schedule, The International Observer Scheme with Observer Programs of Fisheries Organizations

EDG Proposal	Comparison with IWC/RMS 2 rev	Comparison with Fisheries Organizations
<p>Placement of Observers 1.1 Coastal Whaling Operations</p> <p><i>Alternative 1</i></p> <p><i>The Commission shall appoint observers to all points of landing.</i></p> <p><i>For coastal whaling vessels, the following applies:</i></p> <p class="list-item-l1">(a) <i>For vessels which only operate trips of less than 24 hours, carry out no flensing onboard and for which the legal limit of persons onboard does not exceed the number of crew, VMS data shall be transmitted in real time to the observer at the identified point of landing, using IWC approved equipment.</i></p> <p class="list-item-l1">(b) <i>For which vessels which are <24m, operate only within waters under the jurisdiction of the Flag State and that can only accomodate one additional person in addition to the crew, the Commission shall appoint an Observer who may also be appointed as a National Inspector by a Contracting Government.</i></p> <p><i>For all other vessels, the Commission [shall/may] appoint an observer</i></p>	<p>Most of this text derives from paragraphs 7 and 8 of IWC/RMS 2 rev. Bearing in mind that all of the new text is italicised, and thus agreement has not been reached, Alternative 1 improves upon those earlier proposals by reducing the discretion of the Commission to decide whether an observer should be placed on a vessel or at a landing station. Alternative 1 requires observers to be placed at all points of landing and on certain boats engaged in coastal whaling operations. In contrast, Alternative 2 contemplates the type of discretion found in paragraphs 7 and 8 of IWC/RMS 2 rev.</p> <p>Nonetheless, paragraph (a) exempts an unknown number of whaling vessels from the observer requirement, as described in the following column. Before such an exception is granted, the Commission should have an estimate of the number of vessels that fall into this category, at least with respect to existing whaling operations.</p> <p>In addition, this exception would lead to the failure to verify key information. Observers on these vessels are necessary to verify information required by Chapter VI of the Schedule, such as position of capture or striking to the nearest minute of latitude and longitude as well as the number of animals struck but lost. The EDG draft also proposes the submission of information on whale escapes, animal welfare, and time to death. Only persons who witness the whale chase and kill can obtain this information. Without an observer onboard these vessels, it is impossible to verify this information.</p> <p>Moreover, Paragraphs 1.1 and 1.2 do not define “coastal whaling” and “pelagic whaling.” Because Paragraph 1.2 may not impose observer requirements for “pelagic” catcher boats, it is crucial that these two terms are defined here or in Chapter 1 of the Schedule.</p>	<p>Breaking New Ground/Compatible Provisions</p> <p>Alternative 1 requires the Commission to appoint observers at all points of landing. This likely is a function of the unique nature of whaling. It also requires an observer on vessels in many other situations.</p> <p>Against the Trend</p> <p>No Observers on Certain “Day Trip” Vessels. This alternative exempts from observer coverage vessels that operate trips of fewer than 24 hours, carry out no flensing onboard, and for which the number of crew equals the legal limit for persons onboard that vessel. In these circumstances, VMS data will be transmitted in real time to an observer at the identified point of landing. However, the trend in fisheries organizations is to maximize observer coverage. Some fisheries organizations, such as NAFO, already have 100% observer coverage. CCAMLR, ICCAT, and AIDCP/IATTC, have 100% coverage in select fisheries.</p>

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<p>1.1 Coastal Whaling Operations</p> <p>Alternative 2</p> <p><i>[One observer appointed by the Commission [shall/may] be present on all vessels undertaking whaling operations and at each point of landing except that the following applies :</i></p> <p>(a) <i>For vessels which only operate trips of less than 24 hours, carry out no flensing onboard [apart from slitting of the belly at sea]and for which the legal limit of persons onboard does not exceed the number of crew, VMS data shall be transmitted in real time to the observer at the identified point of landing, using IWC approved equipment.</i></p> <p>(b) <i>For which vessels which are <24m, operate only within waters under the jurisdiction of the Flag State and that can only accomodate one additional person in addition to the crew, the Commission shall appoint an observer who may also be appointed as a National Inspector by a Contracting Government.</i></p> <p>(c) <i>the Commission shall appoint two observers to each factory ship.]</i></p>	<p>Alternative 2 differs from Alternative 1 in two respects:</p> <ol style="list-style-type: none"> 1. It does not specifically grant the Commission the power to appoint observers to whaling vessels and points of landing. Instead, the bracketed text includes “shall/may,” indicating that some Members of the Commission want the discretion to keep observers off certain whaling vessels and landing stations. 2. It requires two observers on each factory ship as opposed to one observer under Alternative 1. <p>However, it retains the exception for certain “day trip” whaling vessels. As stated with respect to Alternative 1, this exception would lead to the failure to verify key information. Observers on these vessels are necessary to verify information required by Chapter VI of the Schedule, such as position of capture or striking to the nearest minute of latitude and longitude as well as the number of animals struck but lost. The EDG draft also proposes the submission of information on lactation, whale escapes, animal welfare, and time to death. Only persons who witness the whale chase and kill can obtain this information. Without an observer onboard these vessels, it is impossible to verify this information.</p>	<p>Against the Trend/Incompatible Provisions</p> <p>No Observers on Certain “Day Trips.” This alternative exempts from observer coverage catcher boats attached to factory ships and vessels that operate trips of fewer than 24 hours, carry out no flensing onboard, and for which the number of crew equals the legal limit for persons onboard that vessel. However, the trend in fisheries organizations is to maximize observer coverage. Some fisheries organizations, such as NAFO, already have 100% observer coverage. CCAMLR, ICCAT, and AIDCP/IATTC, have 100% coverage in select fisheries.</p>
<p>1.2 Pelagic whaling operations</p> <p><i>For pelagic whaling operations, the Commission shall appoint two observers to each factory ship. [The Commission shall also appoint an observer on each catcher vessel.]].</i></p>	<p>Most of this text derives from paragraphs 7 and 8 of IWC/RMS 2 rev., although those earlier paragraphs did not include specific provisions for “pelagic whaling operations.”</p> <p>The double brackets around the provision for placing observers on catcher boats suggests that much disagreement still exists. As stated above, the placement of an observer on catcher boats seems necessary to ensure that information required in Chapter VI is verified.</p>	<p>Compatible Provisions:</p> <ol style="list-style-type: none"> 1. Two Observers. CCAMLR contemplates having two observers on each vessel. Most organizations require only one observer, but these requirements are for catcher boats, not factory ships. As such, the IWC provisions for two observers on factory ships cannot be easily compared directly with other fishery organizations. 2. Catcher Vessels. Fisheries organizations always require the observer to be on the boat actually catching the fish.

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<p>2.Selection of Observers</p> <p>2.1 Selection process [see old para 13] Observers shall be selected in accordance with the following procedure. Observers chosen for the combined role with a national inspector (1.1(b) above) must fulfil the qualifications for both positions.</p> <ol style="list-style-type: none"> (1) The Secretariat will put out a call for candidates to apply (including via Contracting Governments, the Scientific Committee and the IWC website). It will develop a standard application form that will include information on the scientific and technical criteria that will be used in the selection process. It will also request information on <i>inter alia</i>: language(s) spoken; available dates; previous experience (including time at sea); any known problems with admission to certain countries; references. [see old 13 a, b] (2) The Secretariat will draw up list of suitable candidates. (3) The list will be circulated to all Contracting Governments with summary of information on each candidate (individual applications may be given to any Commissioner on request). (4) Any Contracting Government may veto any candidate. (5) Following predetermined guidelines, and after consultation with relevant Contracting Governments over practical arrangements, the Secretariat will decide the placement of observers and will inform the appropriate Contracting Governments at least 30 days prior to the start of whaling operations. [see old para 14b] <p>In particular, (a) an individual shall not be appointed to observe in the territory or on a vessel flying the flag of the State of which he/she is a national or permanent resident; except if this results in a serious problem with (b) the fact that an observer must be able to communicate effectively with the senior personnel of that component of the whaling operation they have been selected to observe. [see old paras 14c and 12b]</p>	<p>Most of this text derives from paragraphs 12(b), 13, and 14 of IWC/RMS 2 rev. Grouping these paragraphs into one single provision, as the EDG draft does, clarifies the selection process.</p> <p>The authority of a Contracting Government to veto any candidate must be reconciled with the provisions relating to “fault” under paragraph 10 of the EDG draft. Paragraph 10 permits the waiver of the observer requirement if an observer is not available “through no fault of” the Contracting Government or relevant whaling operation. The Commission must determine whether or not the exercise by a Contracting Government of its veto authority to veto all candidates constitutes “fault.”</p> <p>In addition, Paragraph 2.1(5) states that additional predetermined guidelines must be developed for the placement of observers. Given the intensity of the debate regarding observers, it might be useful to complete guidelines for placement of observers as soon as possible.</p>	<p>Compatible Provisions:</p> <p>The criteria for the observer selection process are generally consistent with those of other fisheries organizations:</p> <ol style="list-style-type: none"> 1. Language Requirements. CCAMLR requires the observer to speak the language of the flag State of the fishing vessel or vessel captain, although several organizations do not specifically require that the observer speak the language of the flag State (AIDCP/IATTC, NAFO, FFA) 2. Observer Roster. Some fisheries organizations generally maintain a list of observers maintained by secretariat (AIDCP/IATTC, NAFO, WCPOC). 3. Technical Training. Fisheries organizations generally require an observer to undergo technical training or have adequate training (CCAMLR, AIDCP/IATTC, WCPOC). <p>Against the Trend</p> <p>Veto. The veto authority granted to each contracting Government is unique to fisheries organizations. No treaty that maintains an international observer program grants this authority to a member. Instead, the organizations require an independent and impartial observer who is adequately trained. However, other fisheries organizations implement their observer programs through bilateral arrangements or through national observer programs. In these arrangements, members have great discretion to determine which observers are hired.</p>

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<p>2.2 Review of performance</p> <p>After a review process determined by the Commission, the Secretariat may remove someone from the approved List of Observers if they are found to have failed to perform their duties adequately.</p>	<p>This is a new provision. While it makes clear that the Commission will create the review process and that the Secretariat may remove an observer from the observer list, it does not make clear whether the Commission or the Secretariat determines that the observer has failed to perform adequately. The provision implies that the Secretariat makes this decision. Nonetheless, it should more clearly identify which body of the IWC will determine that an observer has failed to perform his or her duties adequately.</p>	

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<p>3.Responsibilities of observers</p> <p>3.1 Duties Observers shall carry out the duties conferred on them by the Commission. Nothing in the duties confers on the observers' authority to enforce the provisions of the Convention. Observers cannot intervene in whaling operations or activities connected with these operations. <i>[Old para 9]</i></p> <p>Observers are responsible to the Commission for the conduct of their duties and may neither seek nor receive instructions from any other person, organisation or authority regarding the duties stated below. <i>[Old para 15a]</i></p> <p>Observers shall carry out their duties subject to domestic legislation and other applicable rules and customs, including the authorised mandate of the captain of the whaling vessel and the manager of the point of landing, of the State under whose jurisdiction the observation activities are carried out. <i>[Old para 16]</i></p> <p>Observers' duties shall include <i>[Old Para 9]</i>:</p> <ol style="list-style-type: none"> (1) monitoring that whaling operations are carried out in accordance with the provisions of the Convention; (2) monitoring that information required under the Schedule is collected, sampled, maintained or processed; (3) checking licenses, logbooks and other relevant documents; (4) checking equipment used to catch and flense whales; (5) checking whaling operation areas on vessels, points of landing/primary processing sites, <i>[and processing plants]</i>; (6) checking relevant equipment (e.g. VMS transmitters). 	<p>This text derives from paragraphs 9, 15(a), and 16 of IWC/RMS 2 rev. with the positive addition of a duty to check VMS transmitters as part of the duty to check equipment. Grouping these paragraphs into one single provision clarifies the responsibilities of observers. It adequately sets out the duties of an observer.</p> <p>However, the prohibition against intervening in the whaling operations or activities associated with these operations should make clear that the observer can make reasonable requests in order to fulfil the functions of the observer.</p>	<p>Compatible Provisions:</p> <ol style="list-style-type: none"> 1. Commission-appointed Duties. Other fisheries organizations establish the duties of observers, as opposed to national authorities (CCAMLR, AIDCP/IATTC, NAFO, WCPOC). 2. Observer Duties. The duties of observers are comparable with those of other fisheries organizations (CCAMLR, AIDCP/IATTC, NAFO, FFA).

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<p>3.2 Reporting Observers shall report to the Commission and the Secretariat in English.</p> <p>Observers on whaling vessels shall report <i>[daily]</i> to the Secretariat on any whales <i>[hunted]</i> struck and/or killed. Reports on other relevant observations shall be made at the end of each whaling voyage, and on a monthly basis by land-based observers. However, if an observer suspects that an infraction of the provisions of the Convention has taken place, he/she shall immediately inform the captain of the vessel, the national inspector and/or the manager of the point of landing, as well as the competent national authority and the Secretariat.</p> <p>The Secretariat shall have the observers' reports translated into the language of the Contracting Government having jurisdiction over the commercial whaling operations observed and send copies to that Government. On receipt of the report the Secretariat will transmit promptly a copy of the report to the senior personnel of the component of the whaling operation that had been observed. If a report indicates a possible breach of provisions of the Convention, the Secretariat shall ask the Contracting Government to seek comments from the vessel captain, its national inspector and/or the manager of the point of landing as appropriate. Such comments shall be passed to the Secretariat and be attached as an addendum to the observer's report.</p> <p>Observers shall ensure confidentiality with respect to the conduct of their duties and their reports.</p>	<p>This section combines a sentence from paragraph 9 and all of paragraph 10 from IWC/RMS 2 rev.</p> <p>Section 3.2 requires the observer to report "<i>[daily]</i> to the Secretariat on any whales <i>[hunted]</i> struck and/or killed." Knowledge of the quota on a very frequent basis seems necessary to ensure compliance with such small quotas. Compliance with small quotas, particularly quotas shared between Contracting Governments and fleets, will be enhanced by frequent reporting to the Secretariat, which can then transmit the information to all Contracting Governments and/or whaling vessels. If reports must wait until the end of the voyage, the quota could easily be exceeded. If daily reporting is not required, a sensible alternative would be for the observer "to report immediately, but no later than 24 hours, after any whales are struck and/or killed."</p> <p>Because an observer is required to report to various institutions in the event of a suspected infraction, the observer should be provided with a list agreed by the Commission of what constitutes an infraction. Such a requirement could be included here or in Section 4 below.</p> <p>With these additions, this provision includes adequate reporting requirements relating to whales struck or killed and possible infractions, as well as regular reporting at the end of a cruise.</p>	<p>Compatible Provisions:</p> <ol style="list-style-type: none"> 1. Confidentiality. Other fisheries organizations with observer programs have rules relating to the confidentiality of information (AIDCP/IATTC, NAFO, WCPOC). 2. Submissions to Captains and National Authorities. Other fisheries organizations have requirements to provide reports to vessel captains and competent national authorities (CCAMLR, AIDCP/IATTC). 3. Reporting time: CCAMLR and NAFO require an observer report within 30 days after the voyage, although NAFO requires a report within 24 hours if a violation identified. <p>Breaking New Ground</p> <ol style="list-style-type: none"> 1. Language and Translation Requirements. There are no comparable provisions in fisheries organizations for submission of reports in a specific language or for translation into the language of the member having jurisdiction over the commercial whaling operation observed. 2. Comments from the Captain. While many fisheries organizations require an inspector to show the captain information concerning an alleged infraction, only ICCAT specifically allows the captain to respond to allegations concerning a violation. 3. Daily Reporting of Strikes and Kills. Given the likely small quotas for most whale stocks, it seems essential that the IWC require daily reporting of strikes and kills, or in the alternative, no later than 24 hours after any whales have been struck and/or killed.

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<p>4. Training of Observers</p> <p>The Commission shall ensure that each observer shall be adequately informed of the provisions of the Convention and have the biological and other relevant knowledge necessary to carry out his/her duties. <i>[Old para 12a]</i>. The Secretariat will develop a suitable training programme.</p>	<p>This provision, previously paragraph 12(a) of IWC/RMS 2 rev., adequately establishes a duty on the Commission and the Secretariat to ensure that an observer has adequate training.</p>	<p>Compatible Provisions: This provision is compatible with the provisions of other fisheries organizations, which also require adequate training of observers (CCAMLR, AIDCP/IATTC, WCPOC).</p>
<p>5. Responsibilities of those receiving observers</p> <p>5.1 Visas and immigration</p> <p>The Contracting Government under whose jurisdiction the observer is to carry out his/her activities shall take all necessary measures to assist the observer in obtaining the required visas and immigration documents. <i>[Old para 15c]</i></p> <p>5.2 Co-operation</p> <p>Contracting Governments, national inspectors and all those involved in activities subject to the international observation scheme shall take appropriate measures to ensure the safety, freedom and dignity of the observer at all times and shall cooperate fully with the observer so that he/she can fulfil his/her duties properly and efficiently. <i>[Old para 15b]</i></p> <p>Contracting Governments shall ensure that observers appointed by the Commission must receive sufficient notification of whaling operations to enable them to carry out their duties. <i>[Old Para 8]</i>.</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>This provision includes elements of paragraph 8 and 15 from IWC/RMS 2 rev. This provision could be improved by requiring vessel crew to assist and cooperate with the observer, as in other fisheries organizations.</p>	<p>Compatible Provisions:</p> <p>Safety Requirements. Other fisheries organizations require Contracting Governments and vessel captains to ensure the safety of observers and inspectors (CCAMLR, AIDCP/IATTC, FFA, WCPOC).</p> <p>Incompatible Provisions:</p> <p>Duties of Vessel Crew. Fisheries organizations, such as the CCAMLR, AIDCP, and NAFO, include rules of conduct for vessel crew, such as a duty to assist the observer; a duty to allow access to logbooks, gear, and other equipment required to fulfil the responsibilities of an observer; and a duty not to interfere with the work of the observer.</p> <p>Breaking New Ground:</p> <p>Visa Assistance. There are no comparable provisions that require a Contracting Government under whose jurisdiction the observer is to carry out his/her activities to assist the observer in obtaining visa and immigration documents.</p>