

WESTERN GRAY WHALE ADVISORY PANEL
1st Meeting

WGWAP 1/Discussions
9-11 November 2006
Prangins, Switzerland

NOTES OF IUCN'S OPENING SESSION
AT WGWAP'S FIRST MEETING

CONVENED BY IUCN - THE WORLD CONSERVATION UNION

1 GENERAL FRAMEWORK

Prior to the first full meeting of the Western Gray Whale Advisory Panel (GWAP), IUCN hosted a discussion session on the GWAP and the process surrounding the panel. The purpose of the session was to provide an overview of how IUCN sees the establishment of the GWAP developing over the initial contracted period of 5 years, and set the scene for all participants for the next stage of the western gray whale conservation process.

The session, which was chaired by Mr Carl Gustaf Lundin, Head of the IUCN Global Marine Programme, was broken down into a series of short presentations, each followed by a group discussion involving all participants at the meeting. The presentations are available for viewing at the IUCN website [<http://www.iucn.org/themes/marine/sakhalin/index.htm>]

1.1 The New Approach

While the acronym GWAP refers to the panel itself, the panel is the central part of a wider conservation process that involves a wide range of stakeholders. Reference may therefore be made both to the 'GWAP' - meaning the panel - and the 'GWAP process' - meaning the wider conservation process surrounding the GWAP.

Rather than being a new process, the GWAP builds on the work done, but in a more proactive and strategic manner, as it now has a 5 year time horizon. The aim of this new approach is to ensure a more proactive approach to mitigating the impacts of oil and gas exploration and production activities on the WGW population, by looking at the multiple year work plans of contracting companies, approached comprehensively and on a continuous basis. The 5 year process allows for a more strategic approach, which fundamentally addresses the question *Where do we want to be in 5 years?*. This will change how the work is carried out, and will, for example, be translated into better tracking and reporting of the recommendations and their implementation.

2 OVERVIEW OF THE TERMS OF REFERENCE

Following a brief overview of the GWAP Terms of Reference (TOR) [http://www.iucn.org/themes/marine/sakhalin/ISRP_Followup/GWAP%20TOR%20Final.pdf], participants were provided an opportunity to discuss the TOR and to raise any queries and seek clarification. IUCN developed the TOR in close collaboration with Dr Randall Reeves (Chairman of the GWAP), Sakhalin Energy Investment Company (SEIC) and in consultation with all stakeholders. As a result, an important feature of the TOR is that they were developed through a process of wide consultation. All stakeholders were given an opportunity to comment on the TOR and generally all submissions to the TOR development process were considered and taken account of in the final drafting. This results in a robust TOR which reflects the broad interests of the full range of stakeholders.

Notwithstanding this, the TOR are not cast in stone. It is recognised that the process may evolve and be adapted over time and accordingly the TOR may need to be revised to reflect this. The TOR provide for mechanisms to make appropriate changes throughout the lifecycle of the project.

It is important to understand that the GWAP is, by definition, an advisory panel not a prescriptive body, and its decisions will be in the nature of recommendations not prescriptions. Notwithstanding this, contracting companies are expected to follow

WGWAP's recommendations or justify where / why they will not.¹ The TOR envisage the engagement of other companies but at this stage no other contracting companies have been approached.

The TOR make it clear that the focus of this process is on conservation of WGW and related biodiversity, with an initial focus on Sakhalin shelf – although it is recognized that this may be broadened to include more of the WGW's range in time. The TOR explicitly recognize that all interested parties potentially having an impact on WGW should participate in the WGWAP process. Convincing them of the desirability of joining the process will require a collective effort by contracting companies, governments, IUCN and WGWAP, with such effort to be coordinated by IUCN.

2.1 Discussion

During the discussion on the TOR a number of key points were raised.

1) Engagement of Other Companies

While the TOR explicitly provide for the engagement of other contracting companies,² a number of participants raised the concern that the involvement of other companies didn't seem to be a strong focus and they questioned what steps IUCN had taken to address this.

While it is correct that no other companies have actively been engaged in the process at this stage, IUCN clearly recognises the engagement of other companies operating on the Sakhalin Shelf as important to the overall success of the project. Initial discussions with SEIC indicate that other contracting companies may be willing to participate in the process at some level. It was also noted by SEIC that it may be difficult for companies to speak to one-off *ad hoc* meetings. Thus, while contracting companies have not engaged in the process thus far, the establishment of the WGWAP provides an established body for the engagement of other companies.

Accordingly, it was agreed that an important step in the process would be for IUCN to initiate discussions with other oil companies operating on the Sakhalin shelf, to seek their engagement in the WGWAP process.

As a general principle, and from a fairness perspective, other contracting companies should be involved in the process under similar conditions as SEIC. However, it is also acknowledge by IUCN, the WGWAP and SEIC that specific circumstances vary among the different companies, as does their level of expertise, their capacity to involve fully in the WGWAP process and the impact of their operations on the WGW. Engagement with other companies will be on a case-by-case basis and any strategy to engage other contracting companies will need to consider the specific circumstances of the company and its operations. The level of engagement and contribution to the process may differ between

¹ Paragraph 4(c) of the TOR states: *The contracting companies advised by the WGWAP are expected to follow its conclusions, advice and recommendations - and to clearly identify and document specific areas and points where (i) they were/will be accepted and/or implemented or (ii) they were not/will not be accepted and/or implemented.*

² The TOR provide that all parties to the TOR will have a role in soliciting the participation of other companies. Further, the TOR recognize that to conserve the WGW, it is important that the interested parties potentially having impact on the WGW participate in the WGWAP process.

companies and this should be reflected in any agreement between IUCN and those companies. However, notwithstanding this, it was broadly agreed that any contracting companies participating in the process will be expected to agree to the TOR established for the project. Similarly, companies that become involved in the process should demonstrate full commitment to implement the recommendations of the Panel, in line with the provisions of the TOR.

2) Composition of the Panel

Clarification was sought by some participants as to why the panel was composed the way it is and what justified the number of 10 members.

In developing the panel, the selection committee agreed that 8 to 12 panellists, as provided for in the WGWAP TOR, was an appropriate number. The final composition of the panel was dictated by the specific expertise required by the panel, as well as the range of expertise of those nominated for consideration as panel members. However, the composition of the panel remains flexible. Thus, for example, if the panel highlights a gap in its expertise, it can be augmented with additional members who bring those skills identified. The process for nominating and selecting additional panel members will be similar to the process used to establish the panel in the first place, with an independent selection committee, and appointment by IUCN DG.

It should also be noted that the expertise of the panel can also be augmented with the establishment of Task Forces as provided for in the TOR.³

The process for Task Force establishment is a panel initiative. The purpose is to look at specific issues, and/or broaden knowledge that is lacking in the panel. Task Forces are a flexible approach, and therefore do not go through same process as the selection of panel members. The establishment of Task Forces should consider the most suitable scientists, and could include all relevant stakeholders as appropriate.

3) Engagement of Other States

The TOR recognise that, while the initial focus of the WGWAP will be on activities on the Sakhalin Shelf that may affect the survival and recovery of WGW, the scope of the WGWAP may be broadened over time to include more of the range of the WGW.⁴ This will involve the engagement of range States as appropriate. There was broad agreement among participants that there was a need to eventually broaden the scope of the current initiative to include more of the range of the gray whales. However, at this stage no proposals have been considered to exploring this further. Accordingly it is something that the Panel can explore at a later date as appropriate.

In terms of the relationship with other governments that are not part of a range State, it is recognised that there is value in such relationships, since relevant expertise may be present in government and research institutes of non-range States. However, at this stage this

³ Paragraph 8(c) of the TOR provides that: *to access additional expertise that may be required from time to time, ... the WGWAP may, at the discretion of the Chair, constitute task forces under the coordination of one of the WGWAP members.*

⁴ Paragraph 4(d) TOR.

remains untested. This type of relationship with non-range States will need to be discussed with all parties. However, it is encouraged since the fundamental aim of the process is the conservation of WWG.

3 IMPLEMENTATION OF RECOMMENDATIONS

The TOR provide that conservation recommendations shall be made and management decisions taken with openness and transparency; the consequences of any decisions must be monitored and, if necessary, decisions must be withdrawn or modified over time.

Thus, the contracting companies advised by the WGWAP are expected to follow its conclusions, advice and recommendations- and to clearly identify and document specific areas and points where (i) they were/will be accepted and/or implemented or (ii) they were not/will not be accepted and/or implemented (including a clear explanation therefore).

It was therefore agreed that, at every meeting, the panel will make recommendations and contracting companies will provide responses to these. IUCN will create an online record of recommendations and companies' plans for their to implementation. The information will be available, as a 'living document', which will include a catalogue of recommendations and their implementation, which will be updated on a regular basis. The aim is to have a high degree of continuity between the meetings and to enable continuous tracking of the performance and effectiveness of the process.

3.1 Performance of the Process and the WGWAP

The TOR provide for two levels of performance assessment to ensure that the goal and objectives are achieved:

i) Self-assessment by the WGWAP

In each of its meetings, in order to (i) evaluate its own performance and the extent to which the Contracting Companies are implementing its advice and (ii) provide any recommendations to IUCN for changes needed in the WGWAP process.

This will need to be a standing item on the agenda of future WGWAP meetings, and will provide an opportunity to reflect on the process at each meeting with contracting companies and observers. IUCN will work with the panel to determine criteria for such evaluations and will invite stakeholder input into their development

ii) Independent Assessment

In addition, once every two years, the performance of the collaboration under these TOR will be evaluated by an independent evaluator. The independent agency will make recommendations on how the performance might be improved. IUCN will follow its own internal guidelines for undertaking such a review⁵ and will invite interested parties to tender for the work.

⁵ *Managing Evaluations in IUCN: A Guide for IUCN Programme and Project Managers*, Prepared by the IUCN Monitoring & Evaluation Initiative, 2004

The TOR may be amended to reflect recommendations from the evaluation, provided these are acceptable to IUCN, the Panel, contracting companies and the various stakeholders engaged in the process.

3.2 Discussion

A number of panel members queried the process for amending the TOR.

While it is recognised that a process needs to be followed to amend the TOR, from IUCN's perspective, the idea is not to be too bureaucratic. If the change is not substantive, then changes can probably be made in consultation with the panel and the various stakeholders. However, if proposed changes are substantive, it is considered appropriate for such changes to go through the same process of consultation and review as the development of the original TOR document. However, substantive changes to the TOR are viewed as an exception, rather than a rule.

One participant requested clarification with regard to the proposed schedule of meetings for the panel.

At a minimum, panel meetings will be held annually. However, the actual schedule of meetings will be determined by number of issues, of panel's needs, etc. The objective is to ensure that the meeting schedule allows for the provision of good advice in a timely manner, while giving the Company appropriate time to respond. It is also important to recognise that the schedule of information availability is an important factor in how effective the panel can be in delivering advice to contracting companies. However, it is important to recognise there were two types of information, namely scientific and operational. They do not have the same schedules. This is important, knowing that scientific information is usually behind operational information. Notwithstanding this, having a 5 year programme where milestones and schedules can be planned in advance, should make this easier.

A number of panel members queried the approach and purpose of the independent review included in the TOR.

The objective of this evaluation is to have an independent verification of the process, in order to identify possible issues and take corrective actions. In other words it is to ensure that we are 'on track'. It is not a review of the science or of the performance of individual panel members, but rather the process and how it can be improved. This approach is in-line with normal IUCN practice of evaluating projects and programmes to ensure they are delivering on the objectives.

Thus the evaluation should be seen as a benefit to the process, not as a threat to the process or its participants.

4 FIVE-YEAR VISION

The TOR state that the GWAP will develop a vision for its work over the five year period.

The benefits of such an approach were clearly recognized by all participants as providing a goal to strive towards. It also allows the consideration of the full range of elements that may contribute to a broader conservation strategy.

4.1 Discussion on the different parameters of the vision

1) Time Frame

It was clear that many participants felt that the 5-year timeframe was too short to allow for any meaningful change at a population level. The reference to a 5-year vision is a reflection that the IUCN has established the WGWAP for an initial period of 5 years and it is unclear how the panel and the process will evolve beyond that time.

It is recognised that conservation outcomes may not become fully apparent in a 5 year time period. However, 5 years is considered sufficient to implement mitigation and protection measures and to increase the understanding of the whale's population status such that conservation outcomes can be achieved and observed beyond the initial 5-year period. As such, consideration of conservation strategies and mitigation and management measures need not be constrained by the 5-year period.

2) Elements of a Vision

It was clear that different stakeholders have different ideas regarding the vision. Sakhalin Energy identified the following elements they saw as being important:

- Management needs to be adapted over the next 40 or 50 years - 5 years is only the first step in the wider process
- Transparency: it is important for SEIC to clarify their activities, and improve understanding of what SEIC is trying to achieve. An important aspect of this is publishing what they are going to do and then implementing those plans
- Ensure transparency of scientific information and making it available via scientific processes. It is considered that the peer review process is the most appropriate approach
- A mix between complementary activities and competitive activities, since healthy competition can raise quality levels and lead to innovation
- Focus on the conservation of the whales.

4.2 Clear Objectives for the Vision

Following discussions on the matter the following key elements were broadly agreed among all participants as being important for the vision:

- Accept that conservation outcomes may not be observable in 5 years time but that 5 years should be sufficient to implement protection and mitigation measures and monitoring and to improve considerably our understanding of the whale's population status and ecology

- Through a variety of methods and approaches, to expand and refine our knowledge of how the WGW population uses its environment (e.g. where they go and what they do when not on the Sakhalin shelf)
- No reduction in size of WGW population
- Engagement of other companies working on Sakhalin shelf
- Engagement of other range States of WGW in the longer term
- Robust scientific monitoring integrated into the operational cycle. The development and design of monitoring should be completed in advance of the summer study period and should be based on best practice
- Single agreed datasets for critical scientific questions related to conservation and protection of the population (e.g. Photo-ID catalogues, genetics and health assessments)
- Creation of collaboration, cooperation and coordination between research groups so as to encourage data sharing between research groups working in the field in Sakhalin (independent and dependent)
- Credible and robust oil spill prevention and response system in place based on international best practice or better
- Effective tracking system of both recommendations and what has been implemented. Moreover, an assessment of how effective the IUCN/WGWAP is at changing the operational decision making and behaviour of oil and gas companies through the recommendations, requests and advice provided by the Panel
- Creation and validation of a model that may be useful in addressing conservation issues in other situations beyond that of the WGW
- A timely flow of information to the Panel from SEIC and other oil and gas companies concerning relevant planning and operational decisions