

# **Terms of Reference**

## **Western Gray Whale Advisory Panel (WGWAP)**

### **1. BACKGROUND**

The critical status of the western North Pacific gray whale (WGW) population is well known. The total population numbers only around 120 individuals and may include only 20-25 reproductive females. Little is known about its breeding grounds or migration routes; its only known feeding grounds lie along the coast of north-eastern Sakhalin Island. These feeding grounds are occupied typically from late May/early June until November. Existing and planned large-scale gas and oil activities in this region may pose a serious threat to the population's survival. Threats also arise from other human activities (e.g. fishing) and in other areas of the population's range (e.g. the coastal waters of Japan where three gray whale deaths in fishing gear were recorded in 2005 alone).

WGW were little studied until the 1990s. The program to improve Russia-United States environmental co-operation in the North Pacific region, started in 1994, provided initial support for studies to improve understanding of WGW. The oil and gas development activities off Sakhalin Island caused those initial efforts to be expanded. Collectively, the monitoring and research activities over the last decade, sponsored by both the public and private sectors, have made this one of the better-studied baleen whale populations in the world. Moreover, these activities have brought the population's conservation status and the threats it faces to world attention.

Sakhalin Energy Investment Company Limited (Sakhalin Energy) is a consortium of companies developing oil and gas reserves in the Sea of Okhotsk off the northeast coast of Sakhalin Island in the Russian Far East. The shareholders in Sakhalin Energy are:

- Shell Sakhalin Holdings B.V. (Shell) 55%
- Mitsui Sakhalin Holdings B.V. (Mitsui) 25%
- Diamond Gas Sakhalin, (Mitsubishi) 20%

Sakhalin Energy is implementing the Sakhalin II Production-Sharing Agreement (PSA), an agreement between the Government of the Russian Federation, the Sakhalin Oblast, and Sakhalin Energy. Sakhalin II is a phased development project. Phase 1, an oil-only development,

went into production in 1999 and produces approximately six months of the year during the ice-free period. Phase 2 is an integrated oil and gas development that will allow year-round oil and gas production, and includes two additional offshore platforms, offshore and onshore pipelines, and onshore processing and exporting facilities. Production from Phase 2 of the Sakhalin II Project is planned to commence in 2007. Phase 2 of the Sakhalin II Project is the largest international oil and gas investment in Russia.

To evaluate the science around the WGW in the context of Sakhalin-II, Phase – 2, at Sakhalin Energy's request, an independent scientific review Panel (ISRP) was established in 2004 under the auspices of IUCN – The World Conservation Union. The report of the ISRP (ISRP Report) became publicly available on Feb 16, 2005. The Sakhalin Energy response to the ISRP Report was reviewed in a workshop held on May 11-12, 2005 at IUCN's World Headquarters in Gland, Switzerland and again in a meeting held on Sep 17-19, 2005 in Vancouver, Canada. The Vancouver meeting reaffirmed the proposal for establishing a Western Gray Whale Advisory Panel (WGWAP) that had emerged from the Gland workshop, and suggested a framework for the purpose. Subsequently, Sakhalin Energy requested and IUCN accepted to convene the WGWAP. During the ensuing period of deliberation and negotiation on the terms of reference for the WGWAP, and in response to a need for further independent scientific review of Sakhalin Energy's research, monitoring and mitigation plans for the 2006 construction season, IUCN convened the Interim Independent Scientists Group which met in Vancouver from 3 to 5 April 2006.

This document sets forth the terms of reference for the WGWAP (TOR). The TOR are based on the framework proposed at the Vancouver meetings.

## **2. GOAL AND OBJECTIVES**

The overall goal of the WGWAP is the conservation and recovery of the WGW population. The WGWAP's specific objectives are:

- (a) To provide independent scientific and technical advice to decision makers in industry, government and civil society with respect to the potential effects of human activities, particularly oil and gas development activities, on the WGW population; and
- (b) Co-ordinate research to: achieve synergies between various field programmes; minimise disturbance to WGW, e.g. by avoiding overlap and redundancy of field research programmes; identify and mitigate potential risks associated with scientific research

activities; and maximise the contributions of research to understanding the status and conservation needs of the WGW population.

### 3. PRINCIPLES

In carrying out these TOR, the WGWAP and the contracting companies it advises will be guided by the following principles:

- (a) The Russian Government and relevant regulatory agencies have an important role to play with regard to various developments and WGW conservation on the Sakhalin Shelf. The same holds true of other range States in their respective jurisdictions.
- (b) All reasonable efforts must be made to ensure that development activities, especially oil and gas exploration and production activities on and around Sakhalin Island are environmentally risk-averse and minimise to the maximum extent possible the negative impacts on WGW and related biodiversity (as discussed in the ISRP report).
- (c) 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.
- (d) The advice, recommendations and guidance regarding WGW conservation provided by the WGWAP shall strive to:
  - (i) involve the best local, national and international scientific expertise;
  - (ii) be derived from the best scientific methods, data and information available;
  - (iii) be impartial; and,
  - (iv) be developed and conveyed in a transparent manner.
- (e) To this end the WGWAP must have access to all the relevant information and data from all interested parties. This will require the cooperation of those collecting and generating such information and data. The intellectual property rights of those involved in the collection of data must be respected (e.g., the right to first publication as well as confidentiality concerns, whether of commercial or other nature). The information and data exchange between IUCN and Contracting Companies will take place according to the following considerations:

- (i) Data represent the product of a significant time and money investment – use of data by persons having no rights thereto will be accompanied by appropriate measures aimed at safeguarding the legitimate interests of persons holding rights thereto;
  - (ii) The right of first publication is a generally accepted scientific norm that will be respected and complied with
  - (iii) If recommendations are to be made that have important implications for both conservation of WGW and industry, they should be based on a full scientific review of both data quality and analysis that can be independently verified;
  - (iv) Whilst the results of analyses of the data and broad summaries of the data may be included in WGWAP reports if required to explain the rationale for recommendations, the raw data themselves will remain confidential and the property of the rightful data collectors or providers;
  - (v) The information and level of resolution of the data to be made available to the WGWAP will be determined by the WGWAP and will depend on the analysis for which the data are required; and
  - (vi) Data may be subjected to quality control and verification by the WGWAP and may be excluded from consideration if the WGWAP determines that their integrity or reliability is doubtful.
- (f) Each WGWAP member will be required to sign an individual non-disclosure agreement (NDA) pursuant to which he/she will have an obligation, *inter alia*, not to disclose outside the WGWAP information designated as confidential pursuant to 9.d. of this TOR and to respect the rights of first publication. Provided, however, that the NDA will not preclude the WGWAP from reporting any conclusions relevant to its mandate hereunder that it may base upon such information, as long as none of the confidential information is disclosed in such conclusions.

#### 4. SCOPE

- (a) The WGWAP provides the opportunity for coordination and cooperation between interested parties, including contracting companies, governments, financial institutions, and civil society, and builds upon and expands the ISRP process.
- (b) The WGWAP is an advisory rather than a prescriptive body, and its decisions will be in the nature of recommendations rather than prescriptions.. It will provide guidance and recommendations it considers necessary, useful and/or advisable for the conservation of WGW on a proactive basis; however, it may also respond to specific requests for guidance on relevant issues within its mandate and approved by IUCN. And within the scope of the said mandate, it will be free to seek any information that it decides is necessary and relevant
- (c) 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)
- (d) Substantively, the WGWAP shall focus initially on the conservation of WGW and related biodiversity (as discussed in the ISRP Report). In its considerations and recommendations, the WGWAP will take into account, to the extent possible, the potential impacts of its WGW-related recommendations on other key biota (such as Steller's Sea Eagles or salmon) that may be known to it or may be brought to its attention.
- (e) Geographically, the initial focus of the WGWAP will be on activities on the Sakhalin Shelf that may affect the survival and recovery of WGW. However, as knowledge accumulates, resources increase, and the relevant interested parties from across the range of the WGW become involved, the scope of the WGWAP may be broadened to include more of the range of the WGW. This may require establishing the feasibility of such an expansion through a specific project.
- (f) Where necessary or useful, the WGWAP may seek information and input from scientists and researchers in related fields external to the WGWAP, and establish dialogues with

scientific groups it deems relevant (such as those in Russia, Japan and elsewhere in the WGW range).

- (g) To conserve the WGW, it is important that the interested parties potentially having impact on the WGW 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.
- (h) Should other potential contracting companies not join or should their joining be delayed, it will not constitute a reason for suspending or abandoning WGWAP. The WGWAP will continue to review Sakhalin Energy-related information and to advise Sakhalin Energy accordingly.
- (i) The WGWAP will, in its first full meeting, develop a vision for its work over the next five years that will be translated, through its successive annual work plans, reviews and assessments, into proactive recommendations and advice to Sakhalin Energy and other contracting companies. This and/or other developments may warrant appropriate amendments to these TOR.

## **5. The role and responsibilities of IUCN**

The role and responsibilities of IUCN will be to:

- (a) Act as the impartial convenor of the WGWAP;
- (b) Actively solicit the participation of Other Companies as may be mutually agreed, and in co-ordination, with the Contracting Companies and WGWAP Members;
- (c) Select and appoint the WGWAP Chair and Members;
- (d) Effectively link the relevant stakeholders;
- (e) Establish and preserve the independence of the WGWAP;
- (f) Provide the conduit for the transmission of all information and documentation requests to and from the WGWAP;
- (g) Provide secretariat support to WGWAP, including (without limitation) the management of Budget Funds and negotiation/execution of contracts with WGWAP Members, as necessary and appropriate for their participation in WGWAP;
- (h) Post all relevant reports and materials used and produced by the WGWAP on the IUCN website ([www.iucn.org/themes/marine](http://www.iucn.org/themes/marine)), and distribute them through other media/channels when and as IUCN, in consultation with the Chair, may deem necessary and appropriate.
- (i) Make all efforts to enable the delivery of the outputs provided for in the TOR.

- (j) Establish and manage administration contracts with Contracting Companies that wish to support the GWAP in accordance with these TOR.

## **6. The role and responsibilities of Contracting Companies**

The role and responsibilities of Contracting Companies will be to:

- (a) Enter into a legally binding contract with IUCN for the latter to convene and manage the GWAP.
- (b) Actively solicit the participation of Other Companies, in collaboration with, and with the express agreement of, IUCN and other Contracting Companies and the GWAP.
- (c) Provide relevant information and documentation at their disposal to the GWAP in a timely and well-documented manner to facilitate the efficient functioning of the GWAP.
- (d) Contribute the services of qualified associate scientists in compliance with clause 8.1.c of these TOR
- (e) Contribute to the sustainable funding of the GWAP
- (f) Actively support IUCN in effectively maintaining its credibility as the GWAP impartial convenor
- (g) Provide point-by-point written responses (Contracting Company Response) to all the points raised by the GWAP in each GWAP report.
- (h) With respect to the conclusions, advice and recommendations provided by the GWAP, clearly identify and document specific areas and points (i) where they were/will be accepted and/or implemented or (ii) where they were not/will not be accepted and/or implemented (including a clear explanation therefor).

## **7. KEY TASKS for GWAP**

- (a) Proactively provide scientific, technical and operational recommendations it believes are necessary or useful for conserving the GW population.
- (b) Receive and review all available information related to the GW population;
- (c) Seek and secure any additional information that it may require.

- (d) Using the best available data and information, assess whether the Contracting Companies' studies, assessments and proposed mitigation plans (i) take account of the best available scientific knowledge, (ii) identify information gaps, and (iii) interpret both existing knowledge and information gaps in a manner that reflects precaution<sup>1</sup>.
- (e) Conduct annual assessments, using the available information and data, of the biological and demographic state of the WGW population, as a basis for its recommendations and advice on WGW conservation needs and research priorities.
- (f) Assess whether the studies, assessments and proposed mitigation plans are adequate to ensure that the proposed activities will not have significant impacts on the WGW population;
- (g) Review (i) the effectiveness of existing mitigation measures as determined from associated monitoring programme results, and (ii) the likely effectiveness of proposed mitigation measures; provide recommendations regarding modifications, alternatives or the development of new measures;
- (h) Review existing and proposed research and monitoring programmes and provide recommendations and advice as necessary or useful;
- (i) Recommend new research programmes aimed at ensuring the ultimate recovery of the WGW population;
- (j) Actively assist in soliciting the participation of Other Companies in collaboration with and as agreed by other Contracting Companies and IUCN.

## **8. MODUS OPERANDI OF WGWAP**

### **8.1. WGWAP Composition**

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<sup>1</sup> "Precaution": the "precautionary principle" or "precautionary approach" as defined and applied by IUCN is "a response to uncertainty in the face of risks to health or the environment. In general, it involves acting to avoid serious or irreversible potential harm, despite lack of scientific certainty as to the likelihood, magnitude, or causation of that harm". This definition is the product of the Precautionary Principle Project (2005) – a joint exercise between IUCN, Traffic International, Fauna and Flora International and Resource Africa and is available at:  
[http://www.pprinciple.net/the\\_precautionary\\_principle.html](http://www.pprinciple.net/the_precautionary_principle.html)

- (a) The technical and scientific expertise required on the GWAP (the GWAP members and the Chair) will be determined by IUCN. Objectivity and transparency in the selection process will be ensured by, *inter alia*, setting selection criteria and constituting a candidate evaluation committee. To this end IUCN will consult with interested parties on nominations to be considered but the eventual decision will remain with the IUCN as convenor.
- (b) It is the intention of the Parties to the GWAP Agreement that the GWAP include 8-12 of the best available scientists in their respective fields, independent from, and free of any conflict of interest (whether actual, potential or reasonably perceived) with, any Contracting Companies that the GWAP will advise. The actual number of scientists will depend on their availability and on the mix of expertise they individually bring to the GWAP.
- (c) To access additional expertise that may be required from time to time, on specific issues or for its meetings or workshops or other activities that may occur between GWAP meetings, the GWAP may, at the discretion of the Chair, constitute task forces under the coordination of one of the GWAP members. The task forces may include other members of GWAP as well as non-GWAP scientists with relevant expertise (herein referred to as “associate scientists”) as may be necessary. IUCN will approve the constitution of task forces, information about which will be placed on the IUCN website, and facilitate the work of the task forces to the extent necessary and as agreed with the Chair.
- (d) The GWAP members may resign at any time by notifying IUCN in writing, at least ninety days in advance of the effective date of their resignation. IUCN will publicize the receipt of any such notice of resignation on its website ([www.iucn.org/themes/marine](http://www.iucn.org/themes/marine)).
- (e) In consultation with and with the agreement of the GWAP Chair, IUCN may remove any of the GWAP members and replace them as necessary and appropriate.

## 8.2. Work Plans, Meetings, Missions and Reports

- (a) For each calendar year, and by no later than the end of the last quarter of the preceding year, the GWAP, in consultation with IUCN, will establish a tentative annual work plan, including (but not limited to) the reviews it will undertake, the information it will require, the

meetings it will hold, and the workshops it will convene. Subsequently, and in consultation with the GWAP Chair, IUCN will establish a more detailed work plan for each of the key assignments.

- (b) The GWAP will meet at least once per calendar year. Such meetings will be scheduled to ensure that a full analysis and review of results of the previous seasons' operations and mitigation measures occur sufficiently in advance to influence the Contracting Companies' planning, procedures and activities for the ensuing work season.
- (c) To ensure the GWAP has access to all the requisite information, Contracting Companies will ensure that all their relevant personnel are at hand for consultation by the GWAP at any particular meeting. However, to avoid undue constraints on the GWAP's work, the number of all Contracting Companies' staff at any point during the course of a meeting will not exceed the number of GWAP members in attendance. The GWAP Chair may, in consultation and agreement with IUCN, allow exception to this provision where he/she reasonably believes that doing so is essential for the competent performance of the GWAP.
- (d) The Chair of the GWAP will have the ultimate authority as to the contents of the GWAP's reports and will be responsible for their production. It is expected that adoption of any report by the GWAP will be by consensus among the GWAP members. However, any of the GWAP members will have the right and opportunity to provide a written dissent that will be included in the relevant report as an authored annex.
- (e) The timelines for GWAP reports and Contracting Company responses will be set forth in the agenda of each meeting, which will be developed by the Chair in consultation with IUCN and the Contracting Companies.
- (f) The Chair of GWAP may, with the advance written approval of IUCN, arrange for assignments or commission field visits and missions, either by one or more GWAP members or by other independent experts, to analyze or assess a particular issue, event or outcome of direct relevance to the work of the GWAP. All such assignments, visits or missions will produce reports for consideration by the full GWAP.

### 8.3 Funding

- (a). Funding will initially come mainly from Sakhalin Energy.

(b). Each Contracting Company shall contribute to the funding of GWAP activities as provided in its contract with IUCN.

(c). IUCN will endeavour to seek additional funding from multiple sources

## **9. COMMUNICATIONS AND TRANSPARENCY**

(a) GWAP members will not receive financing for their research from Contracting Companies (including their parent or sister companies and subsidiaries), and shall disclose any conflict of interest (whether actual, potential or reasonably perceived) from recent (last 12 months) or anticipated relationships with the Contracting Companies.

(b) Information and documentation (collectively "information") related to the GWAP, including these TOR, GWAP work plans, meeting schedules and agendas, reports and responses will be made publicly available on the IUCN website.

(c) Open information sessions will be held, at least once a year, for interested parties to discuss the GWAP's progress in implementing these TOR. IUCN will prepare and post on its website after each session a brief factual minute for that session.

(d) All documents submitted to the GWAP will normally be made publicly available by the time the GWAP issues its GWAP Report, except for information that is designated confidential. Whether information is confidential or not will be determined by IUCN in consultation with the entity or individual providing the information. Confidentiality will be an exception rather than the rule, and therefore as much information as possible will be made available to the public.

(e) IUCN will act as intermediary between the GWAP and interested parties in order to (i) ensure all interested parties have fair and equal access to information about the GWAP process and GWAP Reports, (ii) strengthen the independence of the GWAP, (iii) enable documentation of information flows to the GWAP, and (iv) manage requests for information in connection with the GWAP process and work. Subject to the provision in paragraph (g) below, no interested parties shall influence or seek to influence GWAP members.

- (f) The provisions of paragraph 9(e) above apply to the formal activities of the GWGAP that IUCN will convene, and does not preclude interactions between the GWGAP members and interested party scientists as part of the activities of the task forces contemplated in clause 8.1(c) above.
  
- (g) The Chair of the GWGAP will have exclusive authority to speak for the GWGAP on substantive scientific aspects and findings of its work, and will coordinate with IUCN on requests made to him/her by media or the GWGAP members, or other sources, for information, statements and interviews. All queries related to the process of GWGAP will be addressed by IUCN which, likewise, will coordinate with the Chair as necessary. The Chair may delegate his/her authority for responding to any of the substantive scientific questions or findings addressed to him/her to one or more of the members of the GWGAP. Where individual GWGAP members are approached directly, they shall consult and follow the advice of the GWGAP Chair.

## **10. PERFORMANCE ASSESSMENT**

Regular performance assessment is essential to ensure that the collaborative effort required hereunder succeeds and contributes to the achievement of the goal and objectives hereunder. Consequently, assessments of the performance of the GWGAP as an advisory body, of IUCN as a convenor, and of the Contracting Companies in terms of their implementation of the advice from the GWGAP, will be conducted as follows

- (a) Self-assessment will be a recurring item on the agenda of the GWGAP. In each of its meetings, it will (i) evaluate its own performance and the extent to which, in its opinion and on the basis of available information, the Contracting Companies are implementing its advice and (ii) provide any recommendations to IUCN for changes needed in the GWGAP process.
  
- (b) IUCN will, in consultation with the GWGAP Chair and the Contracting Companies, appoint an independent agency to evaluate, once every two years, the performance of the collaboration under these TOR and the effectiveness with which IUCN, GWGAP, and the Contracting Companies have played their respective roles. The evaluation will be conducted against a set of indicators that will be developed by IUCN and agreed with the Contracting Companies and GWGAP. The independent agency will make recommendations on how the performance might be improved.

- (c.) IUCN, as convenor of WGWAP, will in consultation with WGWAP and the Contracting Companies determine to what extent the recommendations arising from 10 (a) and 10 (b) (above) are to be adopted and implemented. IUCN will have the final decision regarding adoption and implementation of such recommendations. IUCN will clearly identify and document specific recommendations (i) where they were/will be accepted and/or implemented or (ii) where they were not/will not be accepted and/or implemented (including a clear explanation therefore). IUCN will ensure that these TOR are amended to reflect the accepted recommendations.

## **11. Participation of Interested Parties**

### 11.1. Government

The Russian Ministry of Natural Resources and other Russian governmental agencies will have the opportunity to:

- a) Provide comments on the WGWAP TOR;
- b) Nominate candidates for membership in the WGWAP;
- c) Provide IUCN with information on issues within the scope of these TOR and important for the WGWAP to consider in carrying out its mandate. IUCN will relay the information it receives to the WGWAP Chair, so that it may be placed on the agenda for the successive WGWAP meetings.
- d) Participate in the Panel's meetings as 'observers', upon invitation and subject to a maximum of four (4) observers;
- e) Participate in the periodic information sessions described under 9. c.

### 11.2. Civil Society

Civil society will have the opportunity to :

- a) Provide comments on the WGWAP TOR;
- b) Nominate candidates for membership in the WGWAP;
- c) Provide IUCN with information on issues within the scope of these TOR and important for the WGWAP to consider in carrying out its mandate. IUCN will relay the information it receives to the WGWAP Chair, so that it may be placed on the agenda for the successive WGWAP meetings;

- d) Participate in the Panel's meetings as 'observers', upon invitation and subject to a maximum of four (4) observers selected by IUCN as the convening organization;
- e) Participate in the periodic information sessions described under 9. c..

### 11.3. Financial Institutions

The financial institutions lending or potentially lending to the relevant projects of the Contracting Companies will have the opportunity to:

- a) Provide comments on the GWAP TOR;
- b) Nominate candidates for membership in the GWAP;
- c) Provide IUCN with information on issues within the scope of these TOR and important for the GWAP to consider in carrying out its mandate. IUCN will relay the information it receives to the GWAP Chair, so that it may be placed on the agenda for the successive GWAP meetings.
- d) Participate in the Panel's meetings as 'observers', upon invitation and subject to a maximum of one (1) observer per financial institution, the total not exceeding four (4) observers;
- e) Participate in the periodic information sessions described under 9. c.

## 12. TERM

The GWAP will be established for an initial period of 5 years, extendable for further periods as necessary and useful, subject to agreement between IUCN and Contracting Companies.

## WGWAP TOR Definitions

Civil Society	Academic institutions, non-governmental organizations (NGOs) and individuals who do not represent another Interested Party.
Contracting Companies	Companies with Oil and Gas concessions on the Sakhalin shelf that have entered into a legally binding contract with IUCN to support the WGWAP
Contracting Company Response	The point-by-point response to the WGWAP Report produced by each Contracting Company
Financial Institutions	Institutions currently, or potentially, lending money to one or more Contracting Companies for a relevant project
Government	Interested governmental authorities/agencies
Interested Parties	Existing Contracting Companies or Other Companies, Financial Institutions, Governments, and Civil Society
Other Companies	Companies that have not yet entered into a legally binding contract with IUCN to support the WGWAP
WGWAP Report	The Report produced by the WGWAP after each WGWAP meeting