

## SUMMARY OF THE RECENT DEVELOPMENT OF COMMISSION PROCEDURES REGARDING THE ROLE OF NGO OBSERVERS

*The Secretariat*

This paper has been prepared in response to a request from the Chair of the Finance and Administration Committee to support discussions at the meeting of the working group on the role of observers at Commission meetings<sup>1</sup>. It provides a brief summary of the development of the Commission's practices related to the role of observers since 2004, and Table One below proposes a number of issues and tentative solutions for discussion by the working group.

### **2004 – 2007: Review and modification of accreditation and attendance requirements**

The rules governing the accreditation and participation of NGOs in IWC meetings have been under active consideration since IWC/56 in 2004. At that meeting the Commission discussed speaking rights for NGOs but agreed that this would be set aside for the time being, preferring instead to review the criteria for accreditation, the numbers of individuals per organisation allowed to access meeting rooms and fee structure and level. These issues were addressed in IWC/58/F&A 3 submitted to the F&A Committee at IWC/58 in 2006, and at IWC/59 in 2007 the Commission adopted changes to the procedure governing accreditation and participation of NGOs in IWC meetings which included:

- an elimination of the requirement for NGOs to maintain international offices
- a relaxation of the restriction allowing only a single observer into the meeting room at any one time
- an adjusted, more equitable fee structure.

### **2008 – 2010: Continued evolution of speaking rights during plenary meetings**

Although 'Civil Society (involvement of)' subsequently became part of the Future of the IWC process<sup>2</sup> the Commission's procedures and practices for working with NGOs continued to evolve since the changes introduced in 2007. For example, in 2008 the Commission introduced an 'NGO Session' into the plenary meeting for the first time. This allowed three organisations from each side of the spectrum to address the plenary for five minutes each (i.e. six NGOs in total). In 2009 a similar practice was followed both at the March intersessional meeting and at IWC/61, with a record of the NGO interventions being provided as an Annex to the Chair's report. At IWC/62 in 2010 eight NGOs addressed the plenary, and as previously their interventions were recorded as an Annex to the Chair's report.

### **2011: Review of IWC Rules of Procedure and continued evolution of speaking rights**

In 2010 the Commission endorsed a recommendation from the Finance and Administration Committee for the Secretary to review the Commission's rules and procedures for consideration at IWC/63 in 2011<sup>3</sup>. Independently the Government of the United Kingdom also submitted a review of the IWC's general governance arrangements<sup>4</sup>. Both documents considered the role of observers. Following discussion of these documents:

- The Chair proposed to develop the system of speaking rights for NGO observers. Instead of allowing NGOs to address the meeting during a dedicated 30 minute session as in previous years he suggested instead to allow six NGO speakers, comprising three from each side of the debate, a total of 30 minutes interventions spread over three specific agenda items which, after informal discussions with NGOs, were to be Sanctuaries, Environmental and Health Issues, and Whalewatching.

During IWC/63 interventions were heard from the Instituto de Conservacion de Ballenas and the IWMC World Conservation Trust during the debate on Sanctuaries. Lack of Commission time meant that no debate, and hence no observer interventions, were heard in relation to Environmental and Health Issues or Whalewatching<sup>5</sup>.

- The Commission adopted Resolution 2011-1 which *inter alia* requested the Secretary to convene a working group of Contracting Governments and observers immediately prior to IWC/64 to consider the role of observers at meetings of the Commission based on experience gained at IWC/63.

<sup>1</sup> The working group on Observers was established through Resolution 2011-1.

<sup>2</sup> See IWC/S08/SWG3 and IWC/60/18

<sup>3</sup> IWC/63/F&A3rev

<sup>4</sup> IWC/63/F&A4

<sup>5</sup> The Commission adopted the reports of the Scientific and Conservation Committees in relation to these items, but did not discuss them during the plenary session because of shortage of time.

## 2012: Further opportunity to consider the role of observers

At IWC/63 in 2011 a number of Contracting Governments stated their support for the productive participation of observers covering all viewpoints at the IWC. At the same time, other Contracting Governments recognised that there were reasons for the differing practices in use at the IWC and indicated that they could not accept observers having a similar level of speaking rights to Contracting Governments. One Contracting Government who expressed caution regarding increased NGO speaking rights noted that the 30 minute NGO session introduced in 2008 was intended as a trial and a review of its effectiveness would now be appropriate. It suggested listing the issues encountered during the trial period with a view to understanding the lessons learned and identifying positive areas for improvement. Building on that suggestion, a draft list of the issues and possible suggestions is provided below:

**Table One: Issues encountered with the 2008 trial**

Issue	Possible Solutions
<p><b>Absence of a discrete Agenda Item:</b> Observers who speak as part of the ‘NGO session’ do not speak to a pre-determined agenda item. As such there is little structure to the interventions, and observers are able to make comments on any part of Commission affairs or the affairs of individual Contracting Governments. In the absence of an agenda item it is difficult for the Chair to apply the rules of debate.</p>	<ul style="list-style-type: none"> <li>• The variation used in 2011 where NGOs were called to speak to the specific agenda item after the main debate (at the Chair’s discretion, and after all Contracting Governments) meant that NGO interventions were directly relevant. In turn, this allowed the opportunity for the Chair to apply the Rules of Debate correctly.</li> <li>• The NGO code of conduct should be updated to state that all interventions must be made in accordance with the Commission’s Rules of Debate</li> </ul>
<p><b>Contracting Government ability to respond:</b> Contracting Governments are not able to respond easily to claims or comments made during the NGO Session. At IWC/62 in 2010 one Contracting Government requested the opportunity to respond to statements made during the NGO Session, and rather than being heard directly the response was considered under a different Agenda Item which had previously been left open in anticipation of the NGO intervention.</p>	<ul style="list-style-type: none"> <li>• The variation used in 2011 where NGOs are called to speak to the agenda item after the main debate would have allowed opportunity for the Chair to hear responses from Contracting Governments should they wish to respond.</li> </ul>
<p><b>Achieving balance:</b> It is difficult to achieve an appropriate balance of arguments from Observers. At the IWC/62 NGO Session the number of groups that spoke in favour of sustainable whale hunting was less than those which supported alternative arguments.</p>	<ul style="list-style-type: none"> <li>• The variation used in 2011 where one NGO from each side of the debate was asked to speak on a specific item ensured balance was maintained.</li> </ul>
<p><b>Number of observers wishing to speak:</b> At IWC62 in 2010 a total of 51 NGOs attended the plenary session. Of these, many had similar interests. An issue arises in selecting which organisations should be called to speak.</p>	<ul style="list-style-type: none"> <li>• One solution is to ask the NGO community to co-ordinate amongst itself. However this may lead to tensions due to the number of organisations wishing to be heard.</li> <li>• An alternative solution may be to use a merit based approach. This could be achieved by requesting observer organisations to provide advance notice of their request to speak, together with evidence of the particular information they are hoping to highlight in their intervention.</li> </ul>