

CIRCULAR COMMUNICATION TO COMMISSIONERS
AND CONTRACTING GOVERNMENTS
IWC.CCG.712

Request for input to the Small Working Group on the Future of IWC

At IWC/60, the Commission agreed by consensus to *inter alia* establish a Small Working Group (SWG) on the Future of IWC (see IWC/60/24). Its Terms of Reference, agreed by the Commission, tasked the SWG with assisting the Commission

'to arrive at a consensus solution to the main issues it faces (based on Table 1) and thus to enable it to best fulfil its role with respect to the conservation of whale stocks and the management of whaling. The working group's primary task in this regard is to make very effort to develop a package or packages for review by the Commission'.

The full Terms of Reference for the SWG are provided in Attachment 1. As part of the discussions on the future of IWC, the Commission also agreed by consensus to Terms of Reference for an Intersessional Correspondence Group on Issues Related to the Scientific Committee (see Attachment 2).

The SWG held a short organisational meeting on Friday 27 June in Santiago shortly after the close of IWC/60. A summary report of that meeting is provided in Attachment 3. The SWG agreed to have its first substantive meeting in the week beginning 15 September 2008. Potential venues are being investigated and information will be circulated as soon as a final venue is identified.

To facilitate discussions at the September 2008 meeting, the SWG agreed that it would be useful to develop the following three documents (see section 4 of Attachment 3):

1. A background paper summarising the current status of discussions within IWC on each of the 33 elements/issues identified during IWC/60 as being of importance to one or more Contracting Governments in relation to the future of IWC (see Table 1 of Attachment 1). This paper will be developed by the Secretariat and circulated to the SWG and Contracting Governments by 15 August 2008.
2. A background paper collating input from Contracting Governments on what they understand is meant/covered by each of the 33 elements/issues.
3. A draft of the discussion document referred to in the Terms of Reference for the Intersessional Correspondence Group on Issues Related to the Scientific Committee (ICG).

While the first paper will be developed by the Secretariat (based on existing documentation), the other two require input from Contracting Governments. **The purpose of this Circular Communication is to therefore to invite this input.**

Understanding of what is meant/covered by each of the 33 elements/issues

Contracting Governments are invited to provide short comments (e.g., in the order of a few paragraphs) on some or all of the elements/issues listed in Table 1 of Attachment 1.

- **Please provide your input to the Secretariat as soon as possible but by 1 September at the latest.** The Secretariat will compile the responses and circulate them to the SWG and Contracting Governments before 15 September.

Intersessional Correspondence Group on Issues Related to the Scientific Committee

Contracting Governments are invited to provide comments/suggestions on any or all of the four areas identified in the Terms of Reference for the ICG (see Attachment 2). The Commission and/or various sub-groups have already given some thought to the four areas and governments may find it helpful to review the following documents when developing the input requested:

- IWC/59/F&A SS 3: Possible options to consider regarding meeting frequency of the Commission and its subsidiary bodies;
- IWC/60/18: Possible improvements to procedural issues identified at the March 2008 Intersessional Meeting on the Future of IWC
 - 2.3 The role of science
 - 2.3.1 Separating the meeting of the Scientific Committee from the meeting of the Commission
 - 2.3.2 Facilitating/improving the involvement of scientists from developing countries
 - 2.3.3 Invited Participants (IPs) to the Scientific Committee
 - 2.3.4 Co-ordination and co-operation with other relevant scientific organisations

These documents have been attached to the email for ease of reference. Also of interest may be the existing Rules of Procedure for the Scientific Committee with respect to membership and observers (see Attachment 4). Rule A.6 dealing with the procedure for inviting scientists to the Committee is of particular relevance.

In addition to any specific comments or suggestions, Contracting Governments who are generally pleased with the present working methods of the Scientific Committee are invited to indicate this.

- **Please provide your input to the by 15 August.** The Chair of the Scientific Committee, the IWC Head of Science and a 'core group' of members from the SWG (listed in Attachment 3) will then compile an initial draft of the discussion document referred to in the ICG Terms of Reference that will be circulated to all Contracting Governments and SWG and ICG members as far in advance as possible of the September SWG meeting.

Please note that only those governments responding will continue to be included in subsequent correspondence (and will therefore comprise the intersessional correspondence group).

Dr. Nicky Grandy
Secretary to the Commission

Attachment 1

Terms of Reference for the Small Working Group on the Future of the IWC

(from Annex B of IWC/60/24)

OBJECTIVES

To assist the Commission to arrive at a consensus solution to the main issues it faces (based on Table 1) and thus to enable it to best fulfil its role with respect to the conservation of whale stocks and the management of whaling. The working group's primary task in this regard is to make every effort to develop a package or packages for review by the Commission.

MEMBERSHIP

Membership of the working group will be representative in terms of e.g. views, geography and economy. It will be assisted by the Secretariat in an *ex officio* capacity, providing scientific and technical assistance as needed. A list of core members is attached, although any Commissioner may attend meetings.

In conducting the business of the working group, members agree to:

- (a) consult with those non-participating countries that it broadly represents – this will assist an inclusive process;
- (b) take into account the known general views of all countries that are not members of the working group.

CHAIR

The Chair of the Commission will appoint a facilitator, one of the current experts¹ (based on their availability) to chair the working group under the supervision of the Chair. This will allow the Chair to intervene in the event that discussions reach an impasse.

MODE OF WORKING

The working group shall decide its own *modus operandi* at an initial meeting in Santiago. It will include, email, conference calls and at least one meeting prior to an intersessional meeting of the Commission. The level of confidentiality shall be such that it allows a free exchange of ideas within the working group; meetings will be closed to observers. After any meetings, the working group will develop a brief progress report to be circulated to the Commission. As noted above, members will be free to (and should) consult with countries who are not members of the working group.

REPORTING

The working group will present a report on the results of its initial deliberations to the 2009 Intersessional Meeting of the Commission on the Future of IWC²; the report will be distributed at least 5 weeks before the Intersessional. Based upon discussions there, intersessional will direct the Working Group to continue working on a possible package or packages and develop a final report that will be distributed at least 5 weeks before IWC/61. The Chair of the Commission will report to all Contracting Parties on the progress made at the 2009 Intersessional Meeting.

¹ Professor Calestous Juma, Ambassador Raúl Estrada-Oyuela and Ambassador Alvaro de Soto

² The Chair of the working group will consult with the Secretariat and the Advisory Group in establishing a date for the intersessional meeting such that a decision can be taken on the dates by November 2008.

Table 1

Elements/issues identified as being of importance to one or more Contracting Government in relation to the future of IWC. These are in alphabetical order.

1.	Advisory/Standing Committee or Bureau – need for
2.	Animal welfare
3.	Bycatch and infractions
4.	Climate change
5.	Civil society (involvement of)
6.	Coastal whaling (i.e. within EEZ)
7.	Commercial whaling moratorium
8.	Compliance and monitoring
9.	Conservation Committee
10.	Conservation management plans
11.	Convention (purpose of)
12.	Co-operative non-lethal research programmes
13.	Data provision
14.	Developments in ocean governance
15.	Ecosystem-based approach to management
16.	Environmental threats to cetaceans
17.	Ethics
18.	Financial contribution scheme
19.	Frequency of meetings
20.	Marine Protected Areas (MPAs)
21.	Objections and reservations
22.	Procedural issues – improvements to
23.	Research under special permit
24.	Revised Management Procedure (RMP)
25.	Revised Management Scheme (RMS)
26.	Sanctions
27.	Sanctuaries
28.	Science – role of science and functioning of Scientific Committee
29.	Secretariat – implications for role of/expertise
30.	Socio-economic implications
31.	Small cetaceans
32.	Trade restrictions
33.	Whalewatching/non-lethal use

Table 2 (revised³)

Contracting Governments who indicated their interest in participating in the small working group

1.	Antigua and Barbuda
2.	Argentina
3.	Australia
4.	Brazil
5.	Cameroon
6.	Chile
7.	China
8.	Costa Rica
9.	Denmark
10.	Germany
11.	France
12.	Iceland
13.	Italy
14.	Japan
15.	Korea, Republic of
16.	Mexico
17.	Netherlands
18.	New Zealand
19.	Norway
20.	Palau
21.	Panama
22.	St. Kitts & Nevis
23.	South Africa
24.	Sweden
25.	USA

³ After IWC/60/24 was distributed, the UK withdrew from the Small Working Group and Germany and Mexico indicated that they wished to join.

Attachment 2

Terms of Reference for the Intersessional Correspondence Group on Issues Related to the Scientific Committee.

(from Annex C of IWC/60/24)

The objective of the correspondence group is to develop a discussion document (and if it deems appropriate, recommendations) on the issues listed below, recognising the inter-relationship of a number of aspects of the issues. The discussion document produced will be forwarded to the small working group on the future of the IWC at a time to be determined.

(1) Consideration of the advantages and disadvantages of separating the annual meeting of the Scientific Committee from that of the Commission; this will include *inter alia*:

- (a) logistical and financial aspects;
- (b) scientific aspects;
- (c) communication with the Commission⁴;
- (d) confidentiality aspects;
- (e) consideration of the applicability of other 'models' such as that of the IPCC.

(2) Consideration of ways to increase participation in the Scientific Committee of scientists from developing countries in the work of the Scientific Committee; this will include *inter alia*:

- (a) selection process and preparation for meeting;
- (b) financial aspects;
- (c) relationship with the overall invited participant process (see 4 below).

(3) Consideration of ways in which the Scientific Committee can assist in improving the knowledge and technical capability of scientists from countries where cetacean research is in its infancy so that they can better contribute to the work of the Scientific Committee and to conservation and management issues within their region; this will include *inter alia*:

- (a) possibility of regional training workshops (consider collaboration with other organisations, e.g. FAO, UNEP, IUCN);
- (b) provision of materials (e.g. documents);
- (c) financial aspects

(4) Review of the process for inviting participants to the Scientific Committee; this will include *inter alia*:

- (a) objectives for inviting participants;
- (b) reasons for non-inclusion of IWC-funded participants on national delegations of developed countries;
- (c) selection process and advice;
- (d) financial aspects.

⁴ Note that other initiatives to improve the communication with the Commission and others with respect to clarity/content of the plenary report etc are being undertaken by the Scientific Committee itself and the initiative of France.

Attachment 3

Summary Report of the Organisational Meeting of the Small Working Group (SWG) on the Future of the IWC

Friday 27 June 2008

1. Appointment of Chair

Bill Hogarth, Chair of the Commission opened the meeting. He recommended that Prof. Calestous Juma, chair the organisational meeting of the SWG. There were no objections.

2. Timing and venue(s) of meetings

The Terms of Reference for the SWG (IWC/60/24, Annex B), envisaged at least one meeting of the group prior to an intersessional meeting of the Commission in 2009. At the intersessional meeting (probably in February/March 2009), the Commission will review an interim report from the SWG and direct the working group to continue working on a possible package or packages and develop a final report that will be distributed at least 5 weeks before IWC/61. The Chair of the Commission will report to all Contracting Parties on the progress made at the 2009 intersessional meeting. It has been suggested that the working group could hold an additional meeting immediately after the 2009 intersessional meeting (i.e. back-to-back).

At the organizational meeting, the SWG **agreed** that, although it was not possible to determine dates that were convenient for all members, its first meeting should be held in the week beginning 15 September 2008, and that it should be of at least 5 days duration. Contracting Governments **agreed** to explore the possibility of hosting the working group meeting and to report back to the Secretariat as soon as possible. If no Contracting Government is able to host the September meeting, it was **agreed** that the Secretariat would make appropriate arrangements in the UK (probably in Cambridge).

With respect to the timing of the 2009 intersessional meeting of the Commission, the Secretariat did not yet have sufficient information on meetings of other IGOs in the February/March time-frame and **agreed** to gather this on return to the UK following IWC/60 and circulate proposed dates to the Commission. It was suggested by at least one working group member, that February would be preferable so as to not have such a large time period between the first meeting of the working group and the intersessional itself.

3. Representation

Some consideration was given to size and composition (e.g. in terms of expertise) of delegations to the working group meeting. It was **agreed** that whilst a formal size restriction would not be set, delegations comprised of three or fewer individuals should be sufficient.

4. Working methods

The SWG addressed a number of issues in this regard.

Languages

It was **agreed** that (1) simultaneous interpretation for French and Spanish speakers will be provided at the first SWG meeting; and (2) the Secretariat would not need to arrange for the translation of SWG documents.

Background papers

- (1) The Secretariat was **requested** to develop a short background paper for the first SWG meeting, based on existing documentation, that summarises the current status of discussions on each of the 33 elements/issues identified as being of importance to one or more Contracting Governments in relation to the future of IWC (see IWC/60/24, Annex B, Table 1). It was **agreed** this document should be distributed to all Contracting Governments and SWG members by **15 August 2008**.
- (2) The SWG **agreed** that input from Contracting Governments on what they understand is meant/covered by the different issues would also be helpful. . It was **agreed** that this input should be provided to the Secretariat by **1 September 2008**. The information would be compiled by the Secretariat and made available to Contracting Governments and SWG members prior to the September SWG meeting.

Several SWG members (as well as Chairman Hogarth) expressed the view that there was a need to “cluster” the elements/issues identified and that the background document to be prepared by the Secretariat and the

compilation of input from Contracting Governments concerning the different elements/issues would assist the working group in doing this.

Intersessional correspondence group (ICG) on issues related to the Scientific Committee

Prof. Juma had noted that the Scientific Committee plays a critical role in the functioning of the IWC and that it was important to recognize that the current difficulties facing the Commission did not result from an inability to provide scientific advice. Several SWG members commented that the Scientific Committee was the part of the Commission that they believed functioned well. Nevertheless, the Commission had agreed that there are aspects of its work and functioning that will benefit from careful review and these are highlighted in the Terms of Reference for the ICG included as Annex C of IWC/60/24.

The SWG **agreed** that the Terms of Reference for the ICG should be circulated to all Contracting Governments with a request for comments/suggestions on any or all of the four areas identified in the Terms of Reference to be received by the Secretariat by **15 August 2008**. As suggested by the Chair of the Scientific Committee, Contracting Governments who were generally pleased with the present working methods of the Scientific Committee should be invited to indicate this. As foreseen when developing the Terms of Reference, the SWG **agreed** that only those governments responding would continue to be included in subsequent correspondence (and would therefore comprise the intersessional correspondence group). A number of working group members offered to be on a 'core group' to assist the Chair of the Scientific Committee and the IWC's Head of Science to compile an initial draft of the discussion document referred to in the Terms of Reference for the intersessional correspondence group. Those offering to be on the 'core group' were Argentina, Australia, Brazil, Italy, Korea, Mexico, Netherlands, New Zealand, Norway, Mexico and the USA. The draft discussion document will be circulated to Contracting Governments and SWG and ICG members as far in advance as possible of the September meeting

Role of the facilitator(s)

The role of the facilitator(s) and how they would interact with the working group was not discussed in any great depth. The Chair of the Commission suggested that one or more of the contracted experts could serve as facilitators at meetings of the SWG and the Commission had agreed that one of them should chair the SWG, thereby leaving the Chair of the Commission free of this responsibility. Final decisions on the implementation of this will in part depend on funding and availability.

5. Documentation

It was agreed that all documents developed for the working group would be circulated to all Contracting Governments for information.

6. Other

It was noted that at some point in the future, proposed text for negotiation will need to be drafted and that it will be important to involve individuals with experience of this type of work.

Attachment 4

Extract from Rules of Procedure of the Scientific Committee

(the full Rules of Procedure are available on IWC's website at:
<http://www.iwcoffice.org/commission/procedure.htm>)

A. Membership and Observers

1. The Scientific Committee shall be composed of scientists nominated by the Commissioner of each Contracting Government which indicates that it wishes to be represented on that Committee. Commissioners shall identify the head of delegation and any alternate(s) when making nominations to the Scientific Committee. The Secretary of the Commission and relevant members of the Secretariat shall be *ex-officio* non-voting members of the Scientific Committee.
2. The Scientific Committee recognises that representatives of Inter-Governmental Organisations with particular relevance to the work of the Scientific Committee may also participate as non-voting members, subject to the agreement of the Chair of the Committee acting according to such policy as the Commission may decide.
3. Further to paragraph 2 above the World Conservation Union (IUCN) shall have similar status in the Scientific Committee.
4. Non-member governments may be represented by observers at meetings of the Scientific Committee, subject to the arrangements given in Rule C.1(a) of the Commission's Rules of Procedure.
5. Any other international organisation sending an accredited observer to a meeting of the Commission may nominate a scientifically qualified observer to be present at meetings of the Scientific Committee. Any such nomination must reach the Secretary not less than 60 days before the start of the meeting in question and must specify the scientific qualifications and relevant experience of the nominee. The Chair of the Scientific Committee shall decide upon the acceptability of any nomination but may reject it only after consultation with the Chair and Vice-Chair of the Commission. Observers admitted under this rule shall not participate in discussions but the papers and documents of the Scientific Committee shall be made available to them at the same time as to members of the Committee.
6. The Chair of the Committee, acting according to such policy as the Commission or the Scientific Committee may decide, may invite qualified scientists not nominated by a Commissioner to participate by invitation or otherwise in committee meetings as non-voting contributors. They may present and discuss documents and papers for consideration by the Scientific Committee, participate on sub-committees, and they shall receive all Committee documents and papers.
 - (a) Convenors will submit suggestions for Invited Participants (including the period of time they would like them to attend) to the Chair (copied to the Secretariat) not less than four months before the meeting in question. The Convenors will base their suggestions on the priorities and initial agenda identified by the Committee and Commission at the previous meeting. The Chair may also consider offers from suitably qualified scientists to contribute to priority items on the Committee's agenda if they submit such an offer to the Secretariat not less than four months before the meeting in question, providing information on the contribution they believe that they can make. Within two weeks of this, the Chair, in consultation with the Convenors and Secretariat, will develop a list of invitees.
 - (b) The Secretary will then promptly issue a letter of invitation to those potential Invited Participants suggested by the Chair and Convenors. That letter will state that there may be financial support available, although invitees will be encouraged to find their own support. Invitees who wish to be considered for travel and subsistence will be asked to submit an estimated airfare (incl. travel to and from the airport) to the Secretariat, within 2 weeks. Under certain circumstances (e.g. the absence of a potential participant from their institute), the Secretariat will determine the likely airfare.

At the same time as (b) a letter will be sent to the government of the country where the scientist is domiciled for the primary purpose of enquiring whether that Government would be prepared to pay for the scientist's participation. If it is, the scientist is no longer an Invited Participant but becomes a national delegate.
 - (c) At least three months before the meeting, the Secretariat will supply the Chair with a list of participants and the estimated expenditure for each, based on (1) the estimated airfare, (2) the period of time the Chair has indicated the IP should be present and (3) a daily subsistence rate based on the actual cost of the hotel deemed most suitable by the Secretary and Chair⁵, plus an appropriate daily allowance.

⁵ [Invited participants who choose to stay at a cheaper hotel will receive the actual rate for their hotel plus the same daily allowance.]

At the same time as (c) a provisional list of the proposed Invited Participants will be circulated to Commissioners, with a final list attached to the Report of the Scientific Committee.

- (d) The Chair will review the estimated total cost for all suggested participants against the money available in the Commission's budget. Should there be insufficient funds, the Chair, in consultation with the Secretariat and Convenors where necessary, will decide on the basis of the identified priorities, which participants should be offered financial support and the period of the meeting for which that support will be provided. Invited Participants without IWC support, and those not supported for the full period, may attend the remainder of the meeting at their own expense.
- (e) At least two months before the meeting, the Secretary will send out formal confirmation of the invitations to all the selected scientists, in accordance with the Commission's Guidelines, indicating where appropriate that financial support will be given and the nature of that support.
- (f) In exceptional circumstances, the Chair, in consultation with the Convenors and Secretariat, may waive the above time restrictions.
- (g) The letter of invitation to Invited Participants will include the following ideas:

Under the Committee's Rules of Procedure, Invited Participants may present and discuss papers, and participate in meetings (including those of subgroups). They are entitled to receive all Committee documents and papers. They may participate fully in discussions pertaining to their area of expertise. However, discussions of Scientific Committee procedures and policies are in principle limited to Committee members nominated by member governments. Such issues will be identified by the Chair of the Committee during discussions. Invited Participants are also urged to use their discretion as regards their involvement in the formulation of potentially controversial recommendations to the Commission; the Chair may at his/her discretion rule them out of order.

- (h) After an Invited Participant has his/her participation confirmed through the procedures set up above, a Contracting Government may grant this person national delegate status, thereby entitling him/her to full participation in Committee proceedings, without prejudice to funding arrangements previously agreed upon to support the attendance of the scientist in question.

7. A small number of interested local scientists may be permitted to observe at meetings of the Scientific Committee on application to, and at the discretion of, the Chair. Such scientists should be connected with the local Universities, other scientific institutions or organisations, and should provide the Chair with a note of their scientific qualifications and relevant experience at the time of their application.