

Annex L

Comments from the Scientific Committee regarding recommendations and proposals from the WGOE

*Doug DeMaster, Robert Suydam, Alex Zerbini, Iain Staniland
(and Heads of Delegations at SC68C, see Annex C)*

1. Background and Introduction

On 5 February 2021 the Working Group on Operational Effectiveness (WGOE) made available for review and comment four revised draft documents that outline proposals for the IWC to consider at its next biennial meeting regarding next steps in the governance review process. Those revised documents attempted to take into account comments previously received by the WGOE. Some of these proposals will directly or indirectly affect the operations and mandates of the Scientific Committee (SC). The purpose of this document is to identify the subset of proposals from the four draft documents that pertain to the Scientific Committee and to initiate a process by which the SC can develop a consensus opinion regarding the merits and possible concerns for reforms proposed in the four draft documents.

The following is from the introduction to the paper on potential reforms to Commission structure and meeting operations, and potential “low hanging fruit” items (referred to as Papers 1&2).

“On 17-18 July 2019, the Working Group on Operational Effectiveness (WGOE) held a workshop in London to elaborate on recommendations to the Commission on how to follow the 39 recommendations contained in the Report of the panel of Independent Reviewers (IWC/67/18), and develop a plan to implement reforms that will improve the institutional and governance arrangements of the Commission and its subsidiary bodies. A report of the July 2019 WGOE workshop was distributed via Commission Circular Communication (IWC.ALL.355).”

The participants at the July 2019 workshop agreed that the WGOE should develop four draft working papers that include proposed reforms and justification for each to be considered at IWC68 in September 2020 (postponed to September 2021 and possibly further postponed to 2022 due to COVID-19):

- Paper 1: Potential reforms to Commission structure and meeting operations
- Paper 2: Potential “low-hanging fruit” items, including those relating to the Rules of Procedure
- Paper 3: IWC Strategic Principles and ToR for Working Group on Strategic Plan
- Paper 4: Budget Reform Strategy

Last year (i.e. 25 June 2020), the SC Chair, Vice-Chair, Heads of Delegations, and Past Chairs developed a paper (DeMaster *et al.* 2020) intersessionally that provided an SC perspective on the four draft working papers as of May 2020. The following is from DeMaster *et al.* (2020):

“... we provide highlights on the key points from the WGOE papers that are relevant to the SC and provide specific comments and suggestions, as appropriate. During May 2020, the SC addressed a limited subset of the usual agenda items because of concerns due to COVID-19, which caused the annual meeting to be held virtually. Thus, the SC as a whole had limited time to consider and no time to discuss the WGOE papers. Instead a sub-group consisting of most of the HoD, past SC Chairs, current SC Chair and Vice-Chair discussed the governance documents via email for development of this initial SC response. We understand that the WGOE will provide additional opportunities for the SC to provide further comments on each of the papers in the future.”

In this document, we provide further SC perspective on the revised draft working papers prepared by the WGOE as of 9 February 2021. Appendix 1 of this paper provides a comprehensive listing of recommendations and proposed reforms from the four draft WGOE document. Further, where appropriate, background information is provided. In the sections below, we provide comments and concerns that we have identified regarding the reforms proposed by the WGOE that pertain to the SC. For convenience and where appropriate, we have copied comments from DeMaster *et al.* (2020) into this document. For easy identification, these excerpts are in bold type.

2. Working Paper 1&2:

Fourteen potential reforms were identified in WGOE working paper 1&2. Eleven of these, while important, do not have significant implications regarding operations and mandates of the SC. These proposed reforms are listed for information in Appendix 1 (although it is possible that SC members may have some concerns regarding one or more of them). Three of these proposed reforms do have significant implications regarding operations and mandates of the SC and are therefore considered further in this section.

- i. The WGOE proposes adding the phrase “as directed by the Commission” to the beginning of the ToR for each of the four committees in order to ensure the committees are provided the proper oversight by the Commission. *[This could be an issue for some members of the SC, given the ambiguity associated with the directive. As members of the SC discussed at last year’s meeting, the SC must be responsive to directives from the IWC. Further, the priorities of the Commission must also be the priorities of the SC. However, the SC requires certain flexibility in its deliberations related to the non-linear nature of scientific progress, the uncertainty of funding, and the availability of members to perform assignments. Finally, noting the political nature of many issues addressed by the Commission, the SC must maintain a certain amount of independence to ensure the scientific voracity of its findings and recommendations.]*

The following is from DeMaster et al. 2020- “The SC would like additional clarification as to what the WGOE intends with this language.”

- ii. A welfare ToR would be added to the SC’s ToR. *[The issue of cetacean welfare will be addressed by the Scientific Committee, the Conservation Committee and the Management Committee. As noted in the Working Paper, communication among IWC committees will be necessary to main appropriate consistency in terminology and policy concerning animal welfare. Regarding animal welfare as specifically applied to the SC, the SC will be responsible for welfare concerns related to*

scientific research. The degree to which animal suffering is condoned as part of a given research program will be addressed under this ToR. It is recognized that all or perhaps most member governments already have protocols in place to ensure that research conducted on cetaceans by citizens of their country are humane.

The following is from DeMaster et al. 2020 – “The SC noted that animal welfare issues were often multidisciplinary in nature and, therefore, the SC, CC and MC would have to work together in addressing such issues”, and “In the recent decade, welfare issues related to cetacean management issues have primarily been the responsibility of the Working Group on Whale Killing Methods and Welfare Issues, although the SC has dealt with welfare issues related to scientific research, entanglement, and whale watching on an ad hoc basis. Where specific scientific studies are needed or where existing data require further interpretation, the WGOE has proposed that the SC include in their work plan an element to address such concerns. Such requests are not routine and typically are dealt with during a single SC meeting. This protocol seems to work well, as it is both efficient for the SC and meets the needs of the Commission. It is proposed that a similar system be codified in the TOR of the SC, and “The SC understands the need for this arrangement and the need for each of these committees to work together on some welfare issues, as appropriate.”

- iii. The report of the Scientific Committee should be completed and made available to all Commissioners and posted on the Commission’s public web site within 21 days of the conclusion of the Scientific Committee meeting. (Appendix 1). *[This could be an issue, as the final SC report from its annual meeting has always taken longer than 21 days; whereas the SC has made the draft final report of the SC available to all Commissioners within 21 days. Clarification as to whether a draft final report is adequate for the Commission’s needs is required.]*

3. Working Paper 3:

This WGOE Working Paper (IWC Strategic Principles and ToR for Working Group on Strategic Plan) identifies three major themes, which are: 1) improve the current structure of the IWC, 2) improve the decision-making process of the IWC, and 3) improve operational efficiency of the IWC. A Strategic Plan is proposed to be finalized and adopted at IWC 69 (possibly in Sept 2023 or 2024). There are no reform proposals that are specific to the SC at this time.

The following is from DeMaster *et al.* (2020) – **“The SC sub-group endorses the proposal to have chairs of the subsidiary bodies being ex-officio members of the body being asked to develop either a Strategic Plan or a Work Plan”**.

4. Working Paper 4:

There were ten potential reforms identified in WGOE Working Paper 3 (Budgetary Reform Strategy). None of these ten proposals, while important, have immediate implications regarding operations and mandates of the SC. However, as noted in working paper 4:

“The Commission has been experiencing financial pressure for some time due to a range of factors including rising costs of meetings, an expanding work program, a prolonged period of frozen contributions, and some members not paying their contributions on time. Adopting deficit budgets is not sustainable and could eventually lead to the Commission running out of money. “

The following are key points from working paper 4 and SC members should be aware of their potential impacts on the operations of the SC:

- (a) inflation should be taken into account when estimating the cost of multi-year projects,
- (b) the Commission's budgetary cycle will have to be aligned with the SC's working cycle,
- (c) the Commission will transition to a Zero-Based Budgeting process,
- (d) a standard template will be used in costing projects and work plans,
- (e) travel claims must be fully documented and received at the Secretariat within 28 days of incurring expenses or within 28 days after the end of an event,
- (f) the Secretariat will develop a new process for establishing new voluntary funds, and
- (g) a four-year budget will be adopted for 2024-2025 (agreed) and 2026-2027 (provisionally agreed).

The following is from DeMaster *et al.* (2020) – “There is a proposal that all budgetary allocations are obligated in the year in which they are allocated. Third party members receiving funds will do so through a contract, which could extend beyond the year in which the funds were allocated. The SC noted that a certain amount of flexibility in implementing its annual budget increases the efficiency and effectiveness of how the SC budget is obligated. To a large extent, this is due to the ~7 month offset between the annual SC meeting and beginning of the IWC fiscal year (i.e., January) and to uncertainties related to the logistics of convening workshops and conducting field research on cetaceans.” and “The practice of the SC has been to “roll over” funding from one fiscal year to the next and to have a small contingency fund. This has proven necessary given the timing of when the SC funding is requested, when it is approved and then when it can begin to be spent (i.e., the beginning of the following January). Therefore, flexibility in how funds are spent is needed by the SC in order to adequately address Commission directives and concerns. It is the understanding of the SC that the WGOE understands this situation and is supportive of continuing this practice.”

5. Next Actions

The following is from DeMaster *et al.* (2020) and forms the conclusion of SC comments to the Commission regarding the status of the four draft working papers, as of May 2020:

“The WGOE has produced 3 papers that describe a series of actions, including various proposals, for the purpose of implementing reforms that are intended to improve the institutional and governance arrangements of the Commission and its subsidiary bodies. The SC appreciates the opportunity to respond to the WGOE regarding the impact of proposals on governance and operational effectiveness on the SC. For the most part the proposed changes do not impact the existing protocols followed by the SC in providing scientific information to the Commission needed to promote the stewardship and conservation of cetaceans worldwide or needed in response to specific requests from the Commission. However, there are a number of issues that could impact the way the SC currently functions or the responsibilities currently assigned by the Commission to the SC. Delegates to the SC wish to offer their support to the WGOE in helping the Commission respond to the challenges the Commission and all of its subsidiary bodies currently face. The SC looks forward to working with the WGOE in finalizing a set of proposed changes that can best meet the mandates and responsibilities of the Commission.”

SC members were asked to familiarize themselves with the key points raised in each of the four WGOE draft working papers. At SC/68c, the SC Chair and Vice-Chair took the lead in formulating comments to the Commission regarding the WGOE proposals based on input received from SC members prior to and during the SC/68c meeting. This document contains SC comments, which will be provided to the WGOE and Commission members as soon as possible after the end of SC/68c.

Appendix 1. Summary of recommendations from WGOE (draft Working Papers 1&2, 3 and 4) that are specific to the operations of the Scientific Committee

1. Governance Reform Papers 1 & 2 - Potential reforms to Commission that impact SC

- a. No significant impact to SC –
 - i. IWC would be composed of four committees – F&A, SC, CC, and MC.
 - ii. Ensuring Schedule amendments are based on best available scientific evidence. This would be implemented by adding TOR for each committee to base their work, advice and recommendations on the best available evidence and take account of any relevant findings. This requirement would not prevent the committees from considering other information as necessary and appropriate.
 - iii. The four committees will coordinate with each other. Resolution 2014-4, established a joint working group between SC and CC. This should be an area of further consideration by the Commission.
 - iv. ToR for the four committees and the Bureau should be consolidated into an Annex to the Rules of Procedure.
 - v. No changes to the SC’s sub-groups.
 - vi. ToR for each subcommittee and working group within a committee would be consolidated into a single document.
 - vii. The Scientific Committee would be directed by the Commission to provide advice and recommendations to the Commission on scientific issues associated with welfare of cetaceans.
 - viii. Membership on the Bureau would be expanded to include the Chairs of the four committees.
 - ix. The Scientific Committee would continue to meet well in advance of the Commission meeting in order to inform the Commission and its sub- groups. The WGOE does not take a position on whether the Scientific Committee should continue to meet annually, or whether the Scientific Committee should shift to biennial meetings, with increased intersessional activity in the off year.
 - x. From appendix 2 - Revised ToR for Committees
 1. ***(8) draw the attention of the Commission to the best available scientific evidence that indicate new or intensifying threats to one or more cetacean populations that may require action by the Commission;***
 2. ***(9) advise the Commission on possible recommendations to Contracting Governments, in accordance with Article VI of the Convention;***
- b. Significant impact to SC –
 - i. The WGOE proposes adding the phrase “as directed by the Commission” to the beginning of the ToR for each of the four committees in order to ensure the committees are provided the proper oversight by the Commission.
 - ii. A welfare ToR would be added to the SC’s ToR.
 - iii. The report of the Scientific Committee should be completed and made available to all Commissioners and posted on the Commission’s public web site within 21 days of the conclusion of the Scientific Committee meeting. (Appendix 1).

2. Governance Reform Paper 3- IWC Strategic Principles and ToR for Working Group on Strategic Plan (no recommendations specific to the SC)

a. Background

- i. Theme 1 - Improving the current **structure** of Commission and subsidiary bodies (including the Bureau), including by considering the need for strategic and/or work plans for Commission and subsidiary bodies.
- ii. Theme 2- Improving decision making processes and two-way **communication** between the Commission and its subsidiary bodies as well as communication and cooperation among the subsidiary bodies.
- iii. Theme 3 - **Operation**: improving efficiency of Commission meetings (agendas, timings, sub-committees).
- iv. Adopt and finalize by Sept 2023 IWC69

3. Governance Reform Paper 4- Budgetary Reform Strategy

a. Background

- i. The Budget Reform Strategy is underpinned by a set of key principles for producing budgets, monitoring spending, and ensuring robust financial controls and best practice. These principles will be embedded within revised Financial Regulations to ensure that financial management is standardised across the Commission and is in line with accounting best practice. The Financial Regulations will also be updated to correct outdated or inaccurate terminology, simplify language, and consolidate guidance held in multiple places. All financial rules and guidance will be centralised for ease of reference and transparency.
- ii. This approach will provide a framework for inclusive and informed consideration of Commission funding priorities and will assist in delivering the Commission's work programme. The application of these principles will achieve the goal of long-term financial sustainability for the Commission.

b. No significant impact to SC

- i. The Commission will plan its budget over four years instead of two.
- ii. Inflation should be taken into account when estimating the cost of multi-year projects in the provisional budget.
- iii. The Budgetary Sub-committee will work with the Scientific Committee and the Secretariat to investigate options to align the Commission's budget cycle with the Scientific Committee's working cycle. This process will be embedded in the Financial Regulations at **Annex A**.
- iv. The Commission will transition to a Zero-Based Budgeting process, to ensure its budget is based on the true cost of performing the Commission's key activities.
- v. Subsidiary body processes for costing projects and work plans will be streamlined through the use of a standard template that will reflect the different needs of subsidiary bodies. This template builds upon the work of templates developed by the ICG-SF and other groups and is at **Annex B**.
- vi. The Secretariat will work closely with subsidiary bodies to develop guidance for *how* projects should be costed - including standardised cost assumptions and processes. This guidance will mandate that Commission-funded travel must be costed and taken at the economy rate.

- vii. Financial and resourcing costs of proposed resolutions or Schedule amendments will be identified before a proposal is submitted for the Commission's consideration through a one-page cover sheet.
 - viii. Travel claims from staff and third parties must be supported by full documentation (i.e. receipts/tax invoices) that the Secretariat must receive within 28 days of incurring expenses (or where costs are associated with an event, 28 days after the end of the event).
 - ix. Following IWC68, the Secretariat will develop a single process for establishing new voluntary funds, consistent Terms of Reference, and clear rules for administration and accounting practices for these funds. This will avoid numerous voluntary funds being established for varying purposes and under different processes then not being used.
 - x. IWC69 – Adoption of four-year budget for 2024-2025 (agreed) and 2026-2027 (provisionally agreed). Proposals for voluntary funds and alignment of Scientific Committee budget cycle with Scientific Committee biennium considered and approved.
- c. Significant impact to SC (no recommendations that will specifically impact the SC) – None identified.