

DISCUSSION PAPER ON RULES GOVERNING PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs) IN THE INTERNATIONAL WHALING COMMISSION

(Submitted by the Advisory Committee)

Introduction

In September last year, the Secretariat was approached by a representative of one of the large environmental NGOs regarding changes that a number of them would like to rules of NGO accreditation in particular but also in their level of participation in Commission affairs. The Secretariat brought this matter to the attention of the Advisory Committee to seek advice on the best way to proceed. The Advisory Committee agreed that this issue should be brought to the attention of the Finance and Administration Committee, and that the best way to do this was for it to develop a paper outlining the issues raised and the potential implications of these. The issues are described in Table 1. **The intention is for the F&A Committee to have a general discussion on the matter at this year's Annual Meeting. If changes are suggested, decisions could be taken at IWC/57 next year, as appropriate.**

The focus of this paper is on NGO participation in the Commission and its sub-groups excluding the Scientific Committee.

Background to the issues

The conditions under which NGOs attend and participate in meetings of the International Whaling Commission (IWC) have traditionally been determined either by the Rules of Procedure or simply by custom.

In essence, NGOs with an interest in the work of the IWC (having offices in at least four countries) may send one observer plus alternates to meetings of the Commission and its various committees (only one observer per organization is allowed into a meeting at any one time). The exception to this is the Finance and Administration Committee and its sub-committees, from which NGOs are excluded. In addition, representatives of NGOs attend meetings of the Scientific Committee as invited participants or as observers. Some Contracting Governments include NGOs on their national delegations.

Under the IWC's Rules of Debate (A.2), NGO representatives, as observers, have the same speaking rights as Commissioners, i.e. they may speak if invited to do so by the Chair. In practice, however, this has been interpreted as applying only to intergovernmental organizations (IGOs), who currently are allowed to make only one substantive intervention per meeting.

A number of NGOs have observed that conditions for their observership at IWC differ markedly from those applying in some other multilateral fora, particularly those formed in more recent years. These tend to allow for the participation (to a greater or lesser extent) of national, as well as international NGOs, and some permit the participation of a larger number of observers per organization and accord NGOs speaking rights. Should the Commission decide to consider whether, and if so how, its Rules of Procedure might be amended to accommodate the wishes of some NGOs for more active participation, certain requirements are paramount. Changes in the rules should not:

- impede the orderly and timely conduct of business in meetings of the Commission or its subsidiary bodies;
- result in an increase in the IWC's costs nor a diminution in its income;
- significantly increase either the number of NGO observers present at meetings, nor the volume of documentation which the IWC Secretariat is required to produce to accommodate them.

With these considerations in mind, it might be appropriate and reasonable to consider the issues covered in Table 1 paying particular attention to potential implications they may have to cost and the orderly conduct of meetings. Background information on the numbers of NGO organizations and individuals attending IWC Annual Meetings is given in Table 2.

Action required: *The Finance and Administration Committee is invited to:*

- (i) *review and comment on the changes described in Table 1;*
- (ii) *discuss whether any of the potential changes should be taken further, and if so how (e.g. through requesting the Secretariat together with the Advisory Committee to draw up formal proposals for changes to the Rules of Procedure for consideration and possible adoption at the next Annual Meeting of the Commission); and*
- (iii) *make recommendations to the Commission as appropriate.*

Table 1. Some potential changes to Rules of Procedure that might be considered in the light of NGO requests

Issue	Comments
1. To remove the requirement that non-governmental organizations maintain offices in more than three countries.	While the intention of this requirement was to reflect the fact that IWC is an international organization, its effect is to exclude organizations whose focus may be national but directly relevant to the work of the Commission. If this particular requirement is removed it may be appropriate to consider some other form of filtering mechanism to limit the number of organizations for practical reasons (and see 2 below). Examples of possible filters are: limiting to incorporated bodies – charity, company limited by guarantee; requiring a minimum number of members or years in existence, etc.
2. To allow accredited NGO's to send up to [five?] representatives to IWC meetings as observers with the possibility of all observers being in the meeting room at any one time.	The 'one observer' rule has encouraged larger organizations to create/use what might be termed 'flag of convenience' organizations whose principal purpose would appear to be to gain access to IWC meetings. While the Secretariat checks that NGOs provide addresses in at least 4 countries, it is not practical to check whether they are bone fide. If more observers per organization were admitted, one might expect that many of these 'flag of convenience' organizations would not be used, such that the total number of persons actually attending meetings and having access to documents would not increase significantly. However, there is no guarantee that this would be the case. [Five?] observers is fewer than some NGOs have suggested, but is clearly more than some of the smaller ones could muster; whether the reduction in the number of organizations would be more or less than the increase in the numbers representing the remaining organizations is unknown and would need to be tested. If there is a change, it should be done on a trial basis. Another possibility would be to set a maximum number of NGO observers on some sort of first come/first served basis. Some consideration could be given to whether NGOs should also be allowed to nominate alternates in addition to the [five] observers, and if so, how many and whether they should be provided with documents.
3. To revise the fee structure for NGOs, such that the effect of the changes listed above is fee-neutral (cost-neutral?) in the year of its introduction and that thereafter, fees should not in general increase by more than such an amount as is necessary to keep pace with inflation in the UK (as host country to the IWC).	Some NGOs have observed that the proportion of the total budget of the IWC which is effectively borne by them and the charges for each NGO are significantly higher than is the case in respect of other intergovernmental organizations. Nevertheless, in view of the current debate within the IWC about the way in which the contributions of Contracting Governments are set, it would currently be inappropriate to reduce the NGOs contribution to the budget. A mechanism to keep the change fee-neutral in the first year would need to be developed and may require setting fees per individual NGO observer rather than per organization as is the case at present. It may also be linked to the filtering mechanism referred to in 1. above. Some consideration could be given to allowing higher than inflation increases if it could be shown that the participation of NGOs gives rise to specific additional costs in particular circumstances (e.g. because there is a premium on hiring the additional space necessary to accommodate them at meetings), in which case a one-off increase in fees could be proposed for the year in question. An alternative would simply be to set a limit on the number in accordance with the size of the venue.
4. To formally confirm the right of NGO representatives to speak at IWC meetings, but with some limitation on the number of interventions that could be made.	A number of treaties and agreements grant NGOs some right to speak. When considering whether or not formally grant speaking rights to NGOs at IWC meetings several factors should be borne in mind. Unfettered speaking rights for NGOs could make the conduct of business difficult and might encourage some to attempt to block progress on items of business with which they were out of sympathy. Some limitations would therefore need to be imposed. Currently, observers from intergovernmental organizations (IGOs) are allowed to make only one intervention on a substantive agenda item in any one meeting and are asked to inform the Chair in advance of the item under which they wish to speak. (This understanding was developed by Commissioners at IWC/53 but is not formalized in any rules.) Clearly it would be inappropriate for NGOs to be given greater speaking rights than IGOs. However, the current restrictions on IGOs are perhaps rather too severe, and consideration could be given to allowing each IGO to have up to [three?] interventions on substantive items per meeting. A similar approach could be applied to NGOs, but in this case, one would need to consider: (1) limiting the number of NGOs allowed to speak on any one item and applying time limits (otherwise debates could become unmanageable); and (2) whether there are some items on which it would be inappropriate for NGOs to make an intervention. Granting speaking rights to NGOs is not a straightforward matter, and in addressing this issue, there needs to be a clear understanding of the advantage of this change to the business of the Commission given that NGO representatives may be included on national delegations (and thereby have some influence on national positions), that NGOs may submit documents to the Commission provided they are sponsored by a Contracting Government and they are able to lobby national delegates directly. If speaking rights were granted, it would be wise to do this on a trial basis.

Table 2. Information on attendance of NGOs at IWC Annual Meetings

Year	Venue	No. NGOs	No. individuals ¹	Accredited NGOs attending IWC/55 in Berlin, 2003			
1974	London	11	21	1. Achiever Yacht Charters Ltd	28. Ecodetectives	53. International Fund for Animal Welfare	72. PANGEA
1975	London	8	20	2. Alaska Cambridge Group	29. Environmental Consultants & Associates	54. International Institute for Environment and Development	73. Pro Wildlife e.V.
1976	London	8	20	3. All Japan Seamen's Union	30. Environmental Investigation Agency	55. International League for the Protection of Cetaceans	74. Robin des Bois
1977	Canberra	11	35	4. American Cetacean Society	31. European Bureau for Conservation & Development	56. International Marine Mammal Association	75. RSPCA
1978	London	17	54	5. American Friends Service Committee	32. Fauna and Flora International	57. International Network for Whaling Research	76. Safety First
1979	London	27	54	6. Animal Care International	33. Finns for Whales	58. International Ocean Institute	77. Sierra Club
1980	Brighton	40	58	7. ACOPS	34. First Knowledge Union	59. International Primate Protection League	78. Sino Cetacean International Institute
1981	Brighton	42	58	8. Animal Kingdom Foundation	35. Florida Caribbean Conservation Coalition	60. International Transport Workers' Federation	79. Survival for Tribal People
1982	Brighton	48	60	9. Animal Welfare Institute	36. Fondation Brigitte Bardot	61. International Wildlife Coalition	80. TEN
1983	Brighton	54	59	10. Antarctic and Southern Ocean Coalition (ASOC)	37. Friends of Nature	62. International Work Group for Indigenous Affairs	81. Vier Pforten e.V.
1984	Buenos Aires	37	45	11. Association of Traditional Marine Mammal Hunters of Chukotka	38. Friends of Whalers	63. Inuit Circumpolar Conference	82. Werkgroep Zeehond
1985	Bournemouth	54	56	12. Biodiversity Action Network East Asia (BANE)	39. Fundación Cethus	64. IWMC World Conservation Trust	83. Whale & Dolphin Conservation Society
1986	Malmo	44	46	13. Campaign Whale	40. Gesellschaft zu Rettung der Delphine e.V.	65. Japan Fisheries Association	84. Whale & Dolphin Watch Australia
1987	Bournemouth	58	60	14. Canadian Marine Environment Protection Society	41. Gesellschaft zum Schutz der Meeressäugtiere e.V. GSM	66. Japan Small-Type Whaling Association	85. Whale Cuisine Preservation Association
1988	Auckland	51	61	15. Caribbean Conservation Association	42. Global Guardian Trust	67. Japan Whale Conservation Network	86. Whales Alive
1989	San Diego	58	61	16. Center for Respect of Life and Environment	43. Greenpeace International	68. Japan Whaling Association	87. Women's Forum for Fish
1990	Noordwijk	68	77	17. Cetacean Society International	44. Group to Preserve Whale Dietary Culture	69. Magadan Native Federation	88. Women's International League for Peace and Freedom
1991	Reykjavik	60	72	18. Conservacion De Mamiferos Marinos De Mexico A.C.	45. High North Alliance	70. Minority Rights Group	89. Working Group for the Protection of Marine Mammals (ASMS)
1992	Glasgow	79	83	19. Cousteau Society	46. Humane Society International	71. Natural Resources Defense Council	90. World Society for the Protection of Animals
1993	Kyoto	85	100	20. David Shepherd Conservation Foundation	47. Indigenous World Association		91. World Wide Fund for Nature
1994	Puerto Vallarta	93	116	21. Dolphin & Whale Action Network	48. Initiative for Social Action and Renewal in Eurasia		
1995	Dublin	91	127	22. Dolphin Connection	49. Institute of the North		
1996	Aberdeen	84	120	23. Earthkind	50. International Association for Religious Freedom		
1997	Monaco	99	154	24. Earthtrust	51. International Environmental Advisors		
1998	Oman	70	83	25. Earth Island Institute	52. International Dolphin Watch		
1999	Grenada	90	110	26. Earth Voice			
2000	Australia	88	129	27. Eastern Caribbean Coalition for Environmental Awareness			
2001	London	101	153				
2002	Japan	101	159				
2003	Germany	91	145				

¹ Includes alternates and interpreters