

March 29, 2007

Western Gray Whale Advisory Panel  
C/O Julian Roberts  
Programme Officer  
IUCN Global Marine Programme  
Gland, Switzerland

Respected Panel Members:

We wish you the best of success in the Western Gray Whale Advisory Panel (GWGAP) meeting on April 15-18, 2007, in St. Petersburg, Russia. In keeping with the GWGAP Terms of Reference, which stipulates that civil society groups will have the opportunity to provide important information for the panel to place on its agenda for consideration, we would like to present the GWGAP with several issues of concern at its upcoming meeting.

**Public Disclosure of *Draft* Oil Spill Prevention and Response Plans:** SEIC and IUCN documents indicate that oil spill prevention and response plans for all Sakhalin II project elements were previously expected to be disclosed by the first quarter of 2007. It is apparent that this expectation will not be met, and we understand that it is possible that these plans may be presented to the GWGAP and the public later this year.

*It is extremely important that these oil spill prevention and response plans be provided to the GWGAP and the public in draft form, with sufficient time to generate comments, so that input can be appropriately integrated into final plans.*

We note that during the first phase of Sakhalin II, civil society groups successfully pressed for disclosure of the oil spill response plan for comment, and we then generated extensive expert input, only to learn later that SEIC considered the plan that it disclosed to be already finalized. As a consequence, civil society and independent experts had no ability to effectively participate in one of the most environmentally crucial aspects of that phase of the project. Then, on September 28, 1999, the first oil spill happened after the first two oil tankers were loaded.

The adequacy of oil spill prevention and response plans for the enormous second phase is now an essential determinant of whether the project is being conducted in a responsible manner. We are concerned that no oil spill prevention and response plan has yet been disclosed, despite the fact that project is largely constructed. Public input is a critical step in ensuring that the Sakhalin-II oil spill prevention and response plans incorporate best international standards and international best practice. We urge the GWGAP to advocate that these oil spill prevention and response plans must be publicly disclosed in *draft* form, with GWGAP and public input subsequently integrated into the next iteration of the plans.

**Conflict of Interest on Oil Spill Export Appointment:** We recently received notice from Julian Roberts that IUCN has appointed Dr. Brian Dicks, formerly with the International Tanker Owners Pollution Federation Ltd. (ITOPF) and Shell UK Exploration and Production, as the “independent oil spill expert” to serve on the GWGAP. Regrettably, in so doing, IUCN has violated provisions to prevent conflicts of interest found in the Terms of Reference for the GWGAP:

*It is the intention of the Parties to the GWGAP Agreement that the GWGAP 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 GWGAP will advise.*

According to the ITOPF website:

*ITOPF is a non-profit making organisation, funded by the vast majority of the world's shipowners.*

ITOPF is not widely viewed as being independent because it unabashedly represents the interests of its corporate membership in efforts to reduce exposure to financial liability associated with oil spills. Moreover, ITOPF's membership has included corporate members of the Royal Dutch Shell Group and ITOPF's Board of Directors includes a representative of the Shell International Trading & Shipping Ltd. Shell is obviously a principal shareholder in Sakhalin Energy Investment Company, a contracting company with the GWGAP. While we do not dispute Dr. Dick's scientific background, IUCN's appointment creates at least a *reasonably perceived conflict of interest*. We harbor no malice for Dr. Dicks, however we must fulfill our duty to point out such obvious conflicts of interest when they occur.

Moreover, in making its appointment, IUCN passed over at least two qualified candidates. One candidate is from Japan—a country that will potentially suffer the brunt of oil spills from Sakhalin II and other nearby projects. By rejecting a highly qualified candidate from a project-affected country and by appointing one who has been closely associated with oil industry interests, IUCN has compromised the perceived impartiality of the larger GWGAP.

Consistent with the GWGAP Terms of Reference provision requiring transparency in the selection process, we would like to request the disclosure of the selection criteria established by the candidate evaluation committee. Also, in light of the conflict of interest, we call on IUCN to rescind this appointment and to reopen the appointment process to reconsider qualified applicants.

**Cumulative Impacts:** The GWGAP was established to consider the potential impacts of all operators on Sakhalin Island. At previous meetings, SEIC consistently indicated that it will endeavor to get other operators to participate, allowing the assessment of cumulative impacts. Yet, we have not received any indication that such invitations have been made. Now that IUCN is officially hosting the process, it also took on the

responsibility to ensure other operators were invited at the last meeting. Consequently, we are concerned that it appears no other operators on Sakhalin Island have been integrated into the process. We urge the Panel and IUCN to officially request other Sakhalin oil and gas operators to take part in the process.

**Noise Data Analysis:** With all the resources available to SEIC, it is unacceptable that the company is unable to provide the panel with useful analysis of the noise data collected to date and has not disclosed complete data to the panel and the public. Further analysis of the 2005 season was requested but the results are unclear. The design of the monitoring has precluded any bona fide real-time monitoring from occurring since the results of any monitoring were not disclosed in a timely manor or analytically linked to concurrent changes in whale behavior. Also, SEIC has not provided meaningful analysis of the 2006 season. Without this information the panel will have limited ability to draw any conclusions on SEIC's activities to date. We would urge the WGWAP to require a precautionary approach in the absence of any conclusive data. We support the panel in its continued effort to demand protective noise thresholds, despite SEIC's efforts to redefine the limits. If SEIC continues to ignore the best scientific advice, we would urge the panel to publicly criticise such behaviour.

#### **A Clear Statement on the Lack of Implementation of Recommendations:**

According to a May 8, 2006 letter to SEIC from the IUCN Director General, Achim Steiner, the IISG members have determined that SEIC has fallen short of implementing many important mitigation measures. Moreover, the letter states:

*SEIC's commitment to implement the IISG's recommendations "where practicable" is somewhat reassuring but, unfortunately, too vague. Concerns exist within IUCN, and have been expressed to my staff by the independent scientists, that the company may not be taking the IISG process seriously enough. We, the scientists, and civil society all need greater reassurance that SEIC intends to heed the IISG's advice in the 2006 construction season....*

*Concerns have also been expressed to us by some NGOs and scientists about the inaccurate interpretation of the IISG recommendations by SEIC...such a loose, if not inaccurate, interpretation puts a serious dent in the credibility of the process for the scientists, IUCN and SEIC itself thus diminishing their value to the cause of conservation that brings us together in the first place....*

Moreover, a July 7, 2006 letter to SEIC by Veden'ov, Nowacek, Ragen and Reeves expresses concern that SEIC does not intend to follow recommendations for decreasing acoustic impacts on whales. An accompanying spread sheet identifies still more recommendations that have not been fulfilled. Additionally, the March 8, 2007 Summary of recommendations from the WGWAP arising from the informal briefing held in Vladivostok 5-6 February 2007, outlines still more concerns about SEIC's unwillingness to follow recommendations, including, astonishingly, that SEIC does not intend to continue monitoring and studying whale behaviour past the 2007 season.

As the May 8, 2006 IUCN letter indicates, the unwillingness of SEIC to follow the panel's recommendations damages the credibility of the process and diminishes the contribution of all involved. Moreover, this unwillingness puts SEIC in breach of its Environmental & Social Action Plan, the adherence to which is a compliance requirement of a number of public and private banks that are still considering financing for the project.

We appreciate the work that the WGWAP has contributed thus far to identify concerns about SEIC's unwillingness to implement recommendations to mitigate impacts. However, these concerns are often expressed in highly technical terms, interspersed in various panel reports, and not summarized in any way that can be fully understood by other stakeholders. Moreover, these concerns often pertain to future instances of potentially unfulfilled recommendations, while past instances seem to be forgotten or are considered to be moot. If the WGWAP continues to follow this pattern, the number of potential future failures will decrease as construction concludes, masking the overall pattern of failure to follow the scientists' recommendations over the entire project construction phase. All external stakeholders will benefit from a clearly articulated cumulative record of instances in which SEIC ultimately failed to adopt reasonable measures recommended by the WGWAP and its predecessor panels. General categories of such a log would include (but not be limited to):

- Failure to apply the precautionary approach on the siting and location of the PA-B platform and other off-shore project elements;
- Failure to collect and disclose adequate baseline data on dynamic offshore conditions prior to construction;
- Failure to wait until research and assessment is completed before related construction commences;
- Failure to conduct associated and cumulative assessments;
- Failure to have monitoring systems in place prior to construction;
- Failure to follow recommendations related to acoustic limits, monitoring methods and mitigation measures;
- Failure to link marine mammal observer reports to necessary changes in construction; and
- Failure to assess the threat of oil spills on the sensitive marine environment and Piltun Lagoon.

We respectfully request that such a record be developed at the forthcoming meeting.

### **The Need to Expand Analysis and Recommendation for Other Species**

The WGWAP Terms of Reference states that the panel shall focus initially on the conservation of the Western Gray Whale and related biodiversity. It also states that, to the extent possible, the focus can extend to other biota, such as Steller's Sea Eagle and salmon, especially as knowledge accumulates, resources increase, and the relevant interested parties from across the range of the Western Gray Whale become involved. As

the Sakhalin-II project has progressed, impacts to other biota such as Steller's Sea Eagle and salmon have become more apparent. As the second meeting of the GWAP convenes, which builds on the good work of the first meeting and considerable interim efforts, we urge the panel to take definitive steps to expand the panel's future accordingly. Initially, we urge the panel to organize an assessment of acoustic impacts on salmon surrounding the LNG and oil export terminals, and receive all related materials and financial resources necessary to achieve this work. Such analysis and resulting recommendations can benefit from the existing panel members' expertise in acoustic impacts, and from additional specialists as needed.

We appreciate the important work of the GWAP and we again wish you good luck in your upcoming meeting.

Sincerely,

Huub Sheele  
Both ENDS  
The Netherlands

David Gordon/Doug Norlen  
Pacific Environment  
United States

Petr Hlobil  
CEE Bankwatch Network  
Central and Eastern Europe

Jan Cappelle  
Projecto Gato  
Belgium

Volker Homes  
Head Species Conservation Section  
WWF Germany and TRAFFIC Europe  
Germany

Dmitry Lisitsyn  
Sakhalin Environment Watch  
Russia

Shoko Murakami  
Friends of the Earth  
Japan

Regine Richter  
Urgewald  
Germany

Paul de Clerck  
Friends of the Earth International  
The Netherlands

James Leaton  
World Wildlife Fund  
United Kingdom