



# Western Gray Whale Advisory Panel (WGWAP) Independent Impact and Learning Evaluation

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Cover photo: **Western Gray Whale and Industry Support Vessel**, by Dave Weller.

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# List of Acronyms

ENL	Exxon Neftegas Limited
IFC	International Finance Corporation
ISRP	Independent Scientific Review Panel
ISTAP	Independent Scientific and Technical Advisory Panel
IUCN	International Union for Conservation of Nature
IWC	International Whaling Commission
MNRE	Ministry of Natural Resources and Environment of the Russian Federation
MMC	Marine Mammal Council
NGO	Non-Governmental Organisation
ToR	Terms of Reference
WGWP	Western Gray Whale Advisory Panel

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# Executive Summary

The Western Gray Whale is an endangered population that feeds offshore of Sakhalin Island, Russia. Important feeding and migration areas overlap with oil and gas production areas. In the early 2000s, Sakhalin Energy asked International Union for Conservation of Nature (IUCN) to convene the Western Gray Whale Advisory Panel (WGWAP) — an independent panel of scientists — to advise Sakhalin Energy on how to mitigate its impacts on the whales. Convening the Panel allowed Sakhalin Energy to satisfy lender requirements to reduce risks to the whales as a condition of loans.

A complicated array of efforts has contributed to research and conservation of Western Gray Whales in the last 20 years. The WGWAP is one of the keystones of this system, serving as a regular platform for Russian and international scientists, companies, non-governmental organisations (NGOs), and government officials to discuss monitoring, research, and conservation of Western Gray Whales.

The WGWAP directed significant scientific and corporate attention to the Western Gray Whale population, about which little was known at the start of the Panel. Now, a robust amount of monitoring and scientific research has been conducted on the Western Gray Whale population. The WGWAP also spurred oil and gas companies active on the Sakhalin shelf to allocate greater resources and attention to Western Gray Whale conservation.

The WGWAP focussed on critical threats to Western Gray Whales associated with offshore oil and gas development, such as noise, habitat impacts, and shipping related to oil and gas construction and operations. Although the WGWAP aspired to address all threats to Western Gray Whales, threats emanating from other industrial sectors such as fisheries received less attention, and the WGWAP was not able to address threats at a range-wide level.

The WGWAP helped Sakhalin Energy minimise its impacts to Western Gray Whales, providing recommendations regarding a wide range of issues associated with the company's construction and operations. Sakhalin Energy did not implement all the recommendations; the company's implementation of recommendations varied over time. Nonetheless, the WGWAP advice led to critical results that reduced the risk from Sakhalin Energy's activities to Western Gray Whales, especially by re-routing an undersea pipeline away from the feeding area, minimising risks from seismic surveys, and minimising risk from vessel traffic.



While the WGWAP clearly reduced the risk from Sakhalin Energy's activities, its success in reducing risk and threats from other oil and gas companies and other industrial sectors was mixed. Many stakeholders believe that the WGWAP encouraged Exxon Neftegas Limited (Exxon) to spend more resources and attention on Western Gray Whales and apply higher standards than it would have otherwise. However, Exxon's lack of transparency makes this difficult to verify. The WGWAP engaged effectively with Gazprom Neft, which chose to share information in a transparent manner and welcomed recommendations, earning Gazprom Neft reputational benefits along with access to world-class cetacean specialists. As a result of mixed engagement with other oil and gas companies, the WGWAP was hindered in its efforts to address cumulative impacts to Western Gray Whales and continues to articulate the need for additional investigation into key conservation issues, such as the availability of benthic prey to sustain the Western Gray Whale population.

The WGWAP has had some influence on the Russian Government to encourage increased conservation of Western Gray Whales. WGWAP recommendations have informed regulators, particularly regarding mitigation measures for new offshore oil and gas projects both in Sakhalin and throughout the Russian Federation and providing a platform for cooperation between leading international and Russian scientists. In the last few years of the Panel, the Ministry of Natural Resources and the Environment of the Russian Federation has welcomed engagement by IUCN and Russian and international Panel members to inform a conservation strategy for Western Gray Whales currently under development.

The WGWAP offers numerous lessons for the development of other Independent Scientific Technical Advisory Panels (ISTAPs). To achieve its goals, WGWAP needed to be both independent of undue corporate, government, and NGO influence and collaborative with corporate, government, and NGO actors. WGWAP was most successful when it achieved this balance. The structure of the WGWAP, which included only Sakhalin Energy as a formal corporate participant, limited the ability of the WGWAP to address issues beyond those directly related to Sakhalin Energy operations. The WGWAP did, however, reduce the reputational risk of both Sakhalin Energy and lenders associated with developing and backing such a large project that involved inherent risks to the environment. NGO engagement was critical to the WGWAP's success — first, because NGOs forced the creation of the Panel by advocating to lenders to place conditions on loans to Sakhalin Energy, and then by maintaining public scrutiny of the process over its entire lifespan. The international cooperation of scientists was highlighted as a positive aspect of the Panel; the Panel also became stronger over time as it engaged more with Russian scientists.

The WGWAP process was dependent on funding by Sakhalin Energy, affecting the WGWAP's effectiveness when Sakhalin Energy reduced funding due to pressures from shareholders. Trust and cooperation among parties to the WGWAP varied, based on several parameters: personal relationships among company staff, Panellists, and IUCN; changes in ownership of Sakhalin Energy; time from the end of Sakhalin Energy's loan period; and the influence of lenders, the lender contractor, and NGOs.

Sakhalin Energy and IUCN have decided to close down the WGWAP by March 2022. Having paid back its loans, Sakhalin Energy is no longer obligated under its loan conditions to fund the WGWAP process. Despite a wide recognition among stakeholders about the value of the WGWAP to Western Gray Whale conservation, a lack of committed funding will cause the closure.

Many stakeholders believe it is important for the conservation efforts of the WGWAP to continue in some form. The two primary opportunities to strengthen efforts to conserve the Western Gray Whale population are:

1. The Russian Government conservation strategy for Western Gray Whales, which is currently under development
2. A potential range-wide strategy through the International Whaling Commission (IWC).

## Recommendations

1. IUCN, in concert with other WGWAP stakeholders, should document and disseminate as much of the WGWAP's experience and information as possible, making the information available transparently and in a widely accessible manner through a communications strategy that includes articles, publications, social media, conference presentations, and a website dedicated to Western Gray Whales.
2. The WGWAP should include in the agenda of the November 2021 WGWAP meeting, a dedicated discussion involving IUCN, Russian government representatives, Sakhalin Energy, Panel members, and NGOs to explore funding streams that can support ongoing conservation efforts, and should also develop an action plan to secure necessary funding for ongoing Western Gray Whale conservation efforts.
3. The Russian government should incorporate WGWAP approaches, expertise, and recommendations into its regulatory framework and the conservation strategy for Western Gray Whales currently under development by the Ministry of Natural Resources and Environment. Stakeholders should work with the Ministry to explore opportunities to implement the conservation strategy.
4. Sakhalin Energy should maintain a commitment to IFC Performance Standards, including IFC Performance Standard 1 ("Social and Environmental Assessment and Management Systems") and Performance Standard 6 ("Biodiversity Conservation and Sustainable Management of Living Resources"). Following the closure of WGWAP, Sakhalin Energy should ensure practices for monitoring and adaptive management that include the involvement of qualified and experienced external experts to verify its monitoring information and implementation of mitigation measures, as called for by the standards.
5. The Russian Government and IWC Scientific Committee members should endorse and champion approval of a comprehensive range-wide initiative and the associated Conservation Management Plan to conserve Western Gray Whales at the IWC. IUCN, NGOs, and Sakhalin Energy should lend their support to this range-wide initiative.



# I. Introduction

The Director General of International Union for Conservation of Nature (IUCN) has commissioned a final independent impact and learning evaluation of the Western Gray Whale Advisory Panel (WGWP). This is the fifth and final evaluation of the work of the Panel.

To achieve these purposes, the evaluation examines the relevance and effectiveness of the Panel, consolidates institutional learning, provides an overview of how the WGWP process has contributed to its goal and the sustainability of such contribution, and provides recommendations to IUCN, Sakhalin Energy, the Ministry of Natural Resources and Environment of the Russian Federation (MNRE) and other stakeholders to explore options to continue to promote the legacy of the WGWP process, after its closure in March 2022.

The primary audiences for the evaluation are IUCN, Panel members, the senior managers and research scientists working for Sakhalin Energy, and MNRE. Each of these parties is expected to build upon the results of the evaluation to inform their decision-making, actions and strategies in their respective roles in the final months of the WGWP closure phase and beyond 2021.

## A. Background and Context

In the late 1990s and early 2000s, Sakhalin Energy developed the Sakhalin-II project, an offshore oil and gas project off the coast of Sakhalin Island. Scientists and conservation NGOs raised concerns about the potential impacts of proposed oil and gas development on Western Gray Whales (WGWS), a population listed in the IUCN Red List as Critically Endangered and in Russia's Red Data Book as Endangered.<sup>1</sup> Initially, at the request of lenders and Sakhalin Energy, IUCN convened the Independent Scientific Review Panel (ISRP) in 2004 to evaluate the science around Western Gray Whales and provide advice to Sakhalin Energy. After a report, workshop, and extensive discussions, the ISRP recommended establishment of a long-term scientific advisory Panel. Following a Lenders' Workshop in 2005, IUCN received and agreed to a request by Sakhalin Energy to convene the WGWP. IUCN convened an Interim Independent Scientists Group Workshop to review construction plans in 2006, and then held the first formal meeting of the WGWP in the autumn of 2006.

A complex set of efforts has contributed to monitoring, research, and conservation of Western Gray Whales in the last 20 years. In addition to the WGWP, notable contributions to Western Gray Whale research and conservation have been made by the Russian Gray Whale Project; the Gray Whale Monitoring Programme (Joint Programme); NGO monitoring and advocacy, especially by Sakhalin Environment Watch, World Wildlife Fund, and International Fund for Animal Welfare; an Interdepartmental Working Group and Cetacean Expert Section of the Priority Species Working Group convened by the MNRE; and the International Whaling Commission and its Scientific Committee. Other oil and gas companies and other industries, such as fishing, also impact Western Gray Whale research and conservation. Generally, changes to the conservation of Western Gray Whales cannot be attributed to any one actor, but occurred as a result of the larger array of efforts. The evaluation shows that the WGWP is one of the keystones of the system, serving as a regular platform for Russian and international scientists, companies, NGOs, and government officials to discuss research and conservation of Western Gray Whales.





Gray Whale | photo by Slowmotiongli (via dreamstime.com)

## II. Methodology

### A. Purpose and Objectives of the Evaluation from the Terms of Reference

The purpose of the evaluation is to:

1. Provide a comprehensive assessment of the WGWAP process throughout the years, and to build a credible and plausible narrative on the likely contribution to the conservation of Western Gray Whales;
2. Provide guidance to Sakhalin Energy, national and local authorities and other key actors — including other oil and gas operators — on how WGWAP's scientific knowledge, recommendations, and lessons learnt can be best deployed by all stakeholders, once the WGWAP is dissolved;
3. Identify and promote best practices and lessons learnt from the WGWAP process and inform existing and/or future similar processes of cooperation between the scientific community, conservation actors, governments, investors and industries or enterprises whose activities have the potential for significant environmental and conservation risks;
4. Distil and consolidate learning on the design, mechanisms and operational arrangements governing Independent Scientific and Technical Advisory Panel (ISTAP) processes to guarantee their effectiveness in delivering their mandate and maximise their cumulative effects.

## B. Evaluation Questions

The full evaluation matrix is shown in Annex 1. The evaluation questions are summarised here, and will be discussed in more detail in each section.

1. **Contribution to the goal of Western Gray Whale conservation** — To what extent has the WGWAP process achieved its expected mandate for the conservation of whales?
2. **Relevance and Effectiveness** — How effective has the WGWAP been in guiding Sakhalin Energy and influencing other stakeholders, including: 1) the oil and gas industry and industries in other relevant sectors, 2) local and national authorities, lending institutions, regulatory and key government agencies such as the MNRE, and other organisations such as the Marine Mammal Council of Russia?
3. **Institution-wide learning** — what did and did not work in the design of the Panel?

## C. Methods used

1. **Document review** — We reviewed documents from the period of the convening of the ISRP to present, with an emphasis on documents produced since the 2018 evaluation.
2. **Key informant interviews** — We interviewed 34 people from nearly all stakeholder groups: WGWAP Panellists (9), Sakhalin Energy (4), IUCN Secretariat (4), Federal authorities (3), Lenders (3), International NGOs (2), National NGOs (1), Research institutes (2), Other (mixed) (1), Sakhalin Energy shareholders (1), Other oil & gas operators (2), International Whaling Commission (IWC) (1), and Local NGOs (1). Stakeholder groups for which no one responded to requests for interviews were Other business sectors and Regional/local authorities. For each interview, we used an Interview Guide to cover the main areas of the evaluation matrix, took notes, and recorded interviews for later verification. We provided each person with an Informed Consent Form which promised confidentiality in order to promote frank responses. As a result, personally identifiable information has been removed from all quotations in the report.<sup>1</sup>
3. **Online survey** — We conducted an online survey. Invitations to participate were sent to the entire list of 132 stakeholders provided by IUCN, of whom 49 filled out the survey, a 37% response rate.<sup>2</sup>
4. **Stakeholder consultations** — We conducted two stakeholder consultations on August 25<sup>th</sup> and 30<sup>th</sup>, 2021. They were set to accommodate time zone differences between Western Europe, Sakhalin, and the US/Canada where stakeholders were located. We presented an overview of our findings and recommendations, and facilitated a discussion of them with participants. The first consultation had 11 participants from IUCN, WGWAP, Sakhalin Energy consultant, shareholder, and former staff, and an international NGO. The second consultation had four participants from IUCN, Sakhalin Energy, and a local NGO.
5. **Outcome harvesting verification** — Based on interviews, document review, and the survey, we developed six outcomes of the WGWAP process, and sent them in Russian and English to 25 people to verify, negate, or modify them. We received five responses, and adjusted the outcomes to reflect this feedback and feedback from the two stakeholder consultations.

<sup>1</sup> In the parlance of the WGWAP, participants other than Sakhalin Energy staff, Panellists, and lenders are commonly referred to as observers.

<sup>2</sup> Results are shown in Annex 5, including affiliations of all respondents.

# III. Contribution to the goal of Western Gray Whale conservation

This section discusses the evaluation question: to what extent has the WGWAP process achieved its expected mandate for the conservation of whales?

Since oil and gas operations commenced offshore of Sakhalin Island, and since the creation of the WGWAP, the population of Western Gray Whales has slowly and steadily increased. The latest analysis by Panellist Justin Cooke states that “The Sakhalin feeding population is estimated to have been increasing at 4.5% p.a. (SE 0.2%) over the 20 years to 2019” (Cooke, Justin G., Population Assessment Update for Sakhalin Gray Whales, WGWAP21/13). As for absolute number, “the number of gray whales recorded off Sakhalin... [reached] 240 (SE 8) animals (excluding calves) in 2018, although not all of these whales visit Sakhalin every year” (Reeves et al., Report on WGWAP to the IWC Scientific Committee, 2020).

However, evaluators did not identify evidence that population growth could be attributed to conservation measures recommended by WGWAP or implemented by Sakhalin Energy or other actors. The WGWAP stated, “Although it was generally agreed that industry activities at Sakhalin had not led to acute lethal impacts on gray whales, there was no consensus on whether there had been non-lethal chronic impacts. Changes in whale population dynamics or behaviour could be so nuanced that they are hard to define and difficult to measure” (WGWAP-21 report).

With this context, evaluators investigated how the WGWAP contributed to conservation of Western Gray Whales.

## A. The WGWAP focussed scientific and corporate attention on Western Gray Whales

Twenty years ago, the Western Gray Whale population was poorly studied. The population was thought to be extinct until a few individuals were sighted in the 1970s and 1980s. Research in the 1990s identified a small Western Gray Whale population, which was assessed in 2000 on the IUCN Red List as “critically endangered.”

Now, much more scientific research has been conducted on the Western Gray Whale population. Scientists have conducted regular photo-identification studies, creating catalogues of known individuals. They have also developed population models and assessments, and studied the population’s genetics. Satellite telemetry has led to new insights about Western Gray Whale migration, although more research on population (stock) structure is needed. Similarly, scientists have started research on Western Gray Whale feeding areas and their benthic prey, although they point to the needs for additional research. They have also investigated the risk of anthropogenic impacts on Western Gray Whales, including impacts from seismic surveys, vessel traffic, and fishing gear entanglement. One Panellist concluded that:

*The Panel played a huge role in drawing attention to the research and the whales...This*

*population is now one of the most studied populations, we know all the animals, life history. At the beginning of this, they were unknown. It's a wonderful project that again underscores the importance of the long-term nature of the work and the research. I think there are very few examples of this in the world.*

A government official added that:

*The main success is the data received by scientists, that they studied and analysed. They got data about the structure of the population, distribution, migration patterns, all that was very important. We knew so little about Western Gray Whales before. That's the main impact.*

WGWP did not conduct research itself; however, several scientists affiliated with the WGWP conducted research, and Sakhalin Energy and the Joint Programme and the Russia Gray Whale Project conducted extensive monitoring operations and research. WGWP served as a regular platform to share, discuss, and foster research. Both the WGWP and the IWC Scientific Committee created spaces to present research results and recommend additional research. Fortunately, the Panel and the Scientific Committee were timed so that the WGWP could provide regular annual updates to the IWC Scientific Committee. Thus, the WGWP created space for focussed, detailed discussion with the participation of a wide range of Russian and international scientists, companies, and NGOs; recommendations and results were also presented to the IWC Scientific Committee for further international review and endorsement in a range-wide context.

## B. Increased resources focussed on Western Gray Whale conservation

We conclude that the WGWP also spurred oil and gas companies, active on the Sakhalin shelf, to allocate greater resources to Western Gray Whale conservation. Sakhalin Energy was obligated by lenders to finance the WGWP. Sakhalin Energy also allocated additional resources to Western Gray Whale monitoring, research, and conservation. Exxon Neftegas Limited (ENL, referred to as Exxon in the rest of this document) did not become a member of the WGWP but spent a significant amount of resources on Western Gray Whale research and conservation through initiatives such as the Joint Programme and its own independent research programmes.

*We conclude that the WGWP also spurred oil and gas companies, active on the Sakhalin shelf, to allocate greater resources to Western Gray Whale conservation.*

It is impossible to say whether Sakhalin Energy and Exxon would have spent the same level of resources on Western Gray Whale research and conservation had the WGWP not existed. Interviewees provided mixed opinions, although a predominant number of interviewees suggested that the WGWP did prompt both companies to allocate greater resources to Western Gray Whales. One Sakhalin Energy employee noted that the focus on Western Gray Whales led Sakhalin Energy to focus proportionally less attention and resources on other species in its Biodiversity Action Plan that did not receive the same public attention. While it is beyond the remit of the evaluators to review Sakhalin Energy's allocation of resources across different species, this perspective suggests that the WGWP did lead Sakhalin Energy to spend more on Western Gray Whale research and conservation than it would have otherwise.

We scanned other large-scale wildlife research and conservation programmes supported by the oil and gas industry internationally and did not find a comparable initiative with the level of resources and focus on a specific population. As a result, we believe the evidence suggests that the WGWP led major oil and gas companies operating on the Sakhalin Shelf to allocate greater resources and attention to Western Gray

Whale research and conservation. One Sakhalin Energy staff member said:

*I can't name any comparable initiatives, for such a long period of time, such large-scale engagement of international and federal [specialists], engagement of several oil and gas companies, there's nothing like it. Experts also note that there aren't other examples of marine mammals where the population was studied in such detail for such a long period of time.*

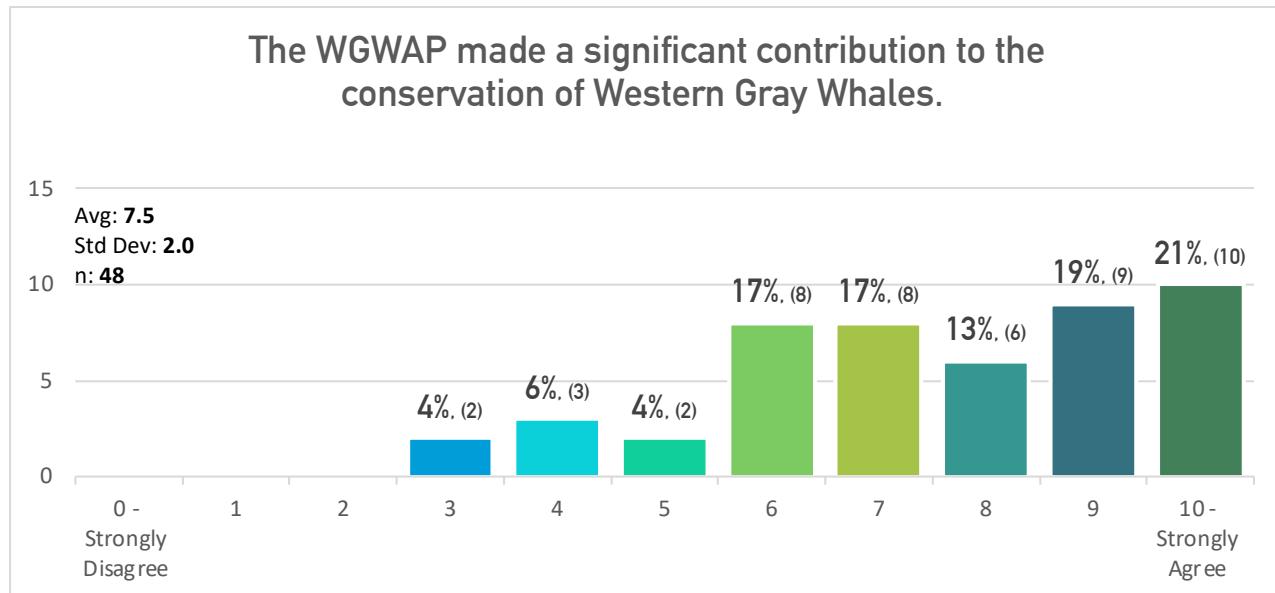


Figure 1. The WGWAP made a significant contribution to the conservation of Western Gray Whales

Figure 1 shows that survey respondents agreed that, overall, the WGWAP made a significant contribution to the conservation of Western Gray Whales. The average response was 7.5 out of a possible 10; notably, 42 of 49 respondents rated the WGWAP's contribution to conservation of Western Gray Whales between a 6 (moderately agree) and a 10 (completely agree). WGWAP panellists rated the contribution highly (8.27), while Sakhalin Energy staff rated the contribution notably lower (5.77); ratings from all other stakeholders concurred with WGWAP panellists (8.13). One government official observed that "The Panel played a critical role in increasing knowledge and attention to Western Gray Whales over the last 20 years. It required monitoring to happen, required companies to have real specialists. It created the opportunity to study them."

*Respondents agreed that, overall, the WGWAP made a significant contribution to the conservation of Western Gray Whales.*

Another government official added that:

*There was almost no data about the population of Western Gray Whales. Soviet research was historical, but we needed new data. We got new data from work conducted by the company...that allowed us to get more exact data about the population. They [WGWAP] analysed the research, and that provided confidence in the data that was provided, and compared it to other international data in the US and Canada. It was very important to participate.<sup>3</sup>*

<sup>3</sup> In addition to the research conducted since the start of the WGWAP, we note that considerable work was also done by numerous scientists, most notably by a joint Russian-U.S. research initiative and with the Russian Gray Whale Project. From 1998, research was reviewed annually by the Scientific Committee of the International Whaling Commission (IWC).

“

*The Panel played a critical role in increasing knowledge and attention to Western Gray Whales over the last 20 years. It required monitoring to happen, required companies to have real specialists. It created the opportunity to study them.*

– Government Official

Figure 2 shows that survey respondents also agreed that the WGWAP's recommendations addressed critical issues affecting conservation of Western Gray Whales, with a score of 8 out of a possible 10 (strongly agree). Notably, 33 of the 49 respondents scored the response an 8, 9, or 10. WGWAP Panellists showed the strongest agreement (8.7), while Sakhalin Energy showed slightly less agreement (7.3); all other stakeholders showed strong agreement, with an average score of 8.0.

### The WGWAP's recommendations addressed critical issues affecting conservation of Western Gray Whales.

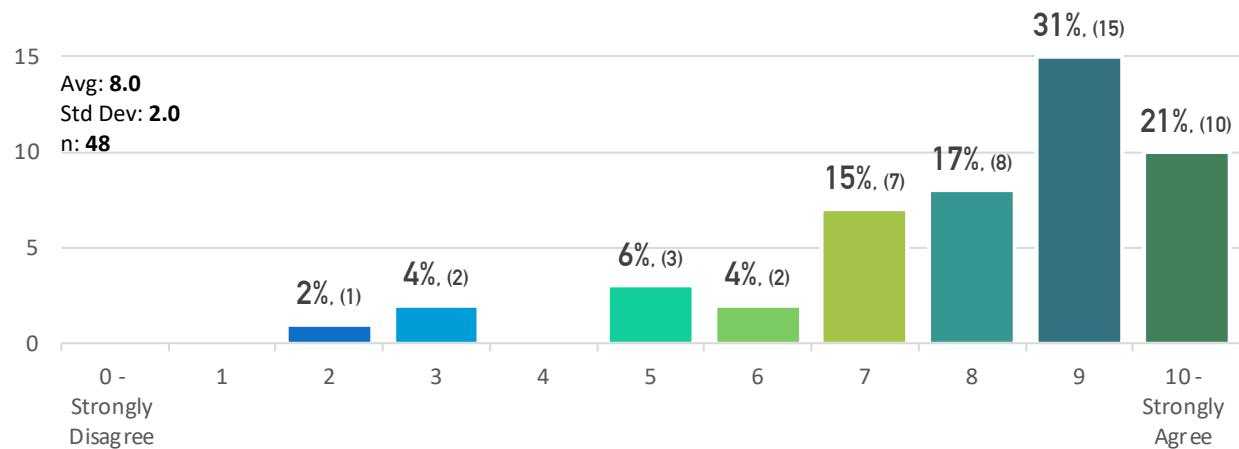


Figure 2. The WGWAP's recommendations addressed critical issues affecting conservation of Western Gray Whales

Interviews showed that the majority of stakeholders believe the WGWAP focussed on critical threats associated with offshore oil and gas development, such as noise, habitat impacts, and shipping related to oil and gas construction and operations. No interviewees noted any oil and gas-related issues that did not receive adequate attention from the Panel, although some Panel members and observers expressed frustration with a lack of agreement from oil and gas companies to adequately investigate potential impacts on benthic resources or cumulative impacts on Western Gray Whales from multiple operators.

Some interviewees recognised that the WGWAP also attempted to focus attention on other key threats, such as fishing gear entanglement. However, the WGWAP was less effective in engaging on these issues, and thus the number of WGWAP recommendations and level of attention focussed on non-oil and gas issues was far less, relatively. Some stakeholders also discussed the need to address conservation of Western Gray Whales at a range-wide level.



Western Gray Whale and Oil Platform | photo by Dave Weller

## IV. Relevance and Effectiveness (Sakhalin Energy)

### A. Minimising Sakhalin Energy's Impacts on Western Gray Whales

The WGWP was created to provide independent scientific advice and recommendations on how Sakhalin Energy could mitigate the negative impacts associated with its operations on Western Gray Whales and their habitat. On the whole, survey respondents strongly agreed with the statement that “the WGWP helped Sakhalin Energy minimise its impact on Western Gray Whales,” with an average score of 8.0 out of a possible 10, as shown in Figure 3. Out of 47 respondents, 42 rated their answer as a 7 or higher. Key stakeholder groups all scored their agreement highly, with only modest differences: respondents from Sakhalin Energy had an average response of 7.5, members of the WGWP had an average response of 8.1, and all other respondents had an average response of 8.2. The Standard Deviation on this question was 1.5 —one of the lowest in the whole survey — suggesting wide agreement across respondents.

*Survey respondents strongly agreed with the statement that the WGWP helped Sakhalin Energy minimise its impact on Western Gray Whales.*

## The WGWAP helped Sakhalin Energy minimise its impact on Western Gray Whales.

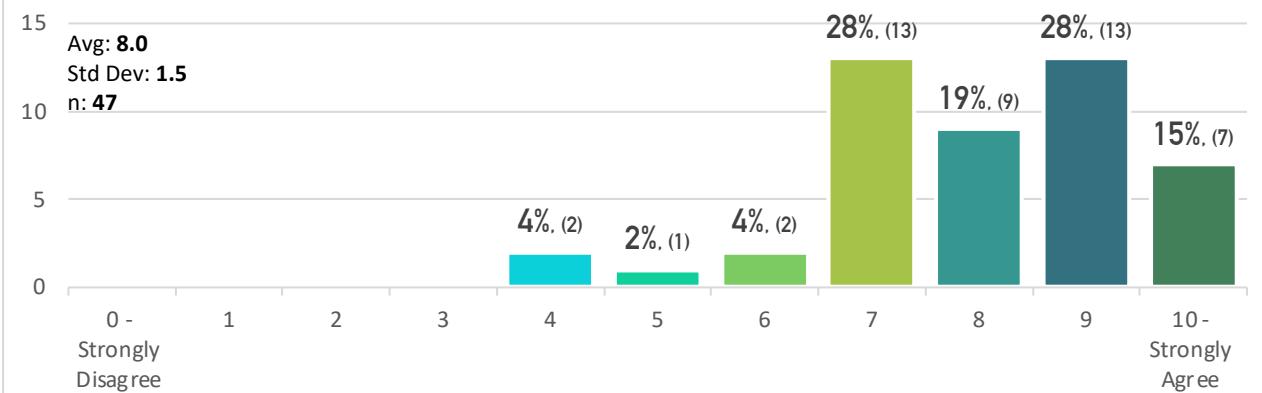


Figure 3. The WGWAP helped Sakhalin Energy minimise its impact on Western Gray Whales

One observer of the Panel stated:

*Actually, there were a lot [of recommendations implemented], associated with considering recommendations for choosing the optimal time for seismic exploration, for using other measures to reduce impact from seismic exploration — all of this played a colossal role.*

Other interviews expanded on the role of the Panel:

*The most useful advice [was] probably discussion and development of measures to minimize impact. (Sakhalin Energy employee)*

*There was a joint process. I can't say the company fully adopted everything, but it still agreed with a lot. That's a serious precedent. (Panel member)*

*On the whole, it seems to me that Sakhalin Energy listened [to the WGWAP]. It's difficult to say, because many recommendations were partially implemented, not completely. But it seemed to me they often listened...there were arguments, but recommendations were generally done. (Panel member)*

Nonetheless, some stakeholders remain concerned about Sakhalin Energy's implementation of recommendations. One scientist familiar with many aspects of oil and gas operations in the region noted that at the beginning of the Panel, Sakhalin Energy ignored many recommendations. It only strengthened its attention to the WGWAP after it faced a potential default on environmental obligations associated with onshore pipeline construction, unrelated to Western Gray Whales, and needed to maintain good relations with project lenders. Once this occurred, he said, the Panel was much more effective at increasing standards to minimise impacts on Western Gray Whales. However, he believes that factors since 2015 — including a drop in oil prices, pressure within Sakhalin Energy to spend less on Western Gray Whale conservation, and a lack of enforcement by Russian authorities — have caused Sakhalin Energy to again relax its mitigation measures and its commitment to Western Gray Whale conservation.

A Panellist pointed out that Sakhalin Energy failed to implement recommendations to research the Piltun Lagoon, which was needed to develop habitat restoration plans in the event of a spill that would harm the habitat. He also criticised Sakhalin Energy's lack of compliance with recommendations to monitor benthos, the food source for Western Gray Whales, and lack of progress in creating a unified photo ID catalogue. He noted, "One of the fundamental problems is that over time, the company started to seriously cut the

budget of the whole process. This is because the company stopped seeing the importance of it." This concern was echoed by several other scientists, who lack confidence that Sakhalin Energy will continue to follow recommendations to minimise impacts to Western Gray Whales in the future. Sakhalin Energy staff point out that company standards and procedures have been developed over the years in line with WGWAP recommendations and guidance. Although the WGWAP will cease, Sakhalin Energy staff argued that these standards and procedures are embedded in its Health, Safety, and Environment Management System and thus will continue, and that any WGWAP standards and procedures required by Russian government regulations must also be followed by the company.

*"On the whole, it seems to me that Sakhalin Energy listened [to the WGWAP]. It's difficult to say, because many recommendations were partially implemented, not completely. But it seemed to me they often listened...there were arguments, but recommendations were generally done.*

– Panel member

Analysis of all 639 recommendations is problematic, since several categories such as "Closed - superseded by a new recommendation," "Closed - no longer relevant but had not been implemented satisfactorily at the time it became moot," and "Retracted by WGWAP" make overall analysis difficult. To reduce some of the noise in the data, we asked IUCN staff and the Panel Chair to pull out the most important recommendations over the life of the Panel. The result was 92 recommendations that spanned the life of the Panel and the ISRP.

Of these, 52 were "Closed - implemented/resolved satisfactorily," covering all categories of recommendations (e.g., noise, oil spill, traffic and marine mammal observers, etc.). Sakhalin Energy was responsible, at least in part, for all but four (IUCN was responsible for three, and Russia Gray Whale Project/International Fund for Animal Welfare for one). Figure 4 shows when these 52 closed recommendations were made.

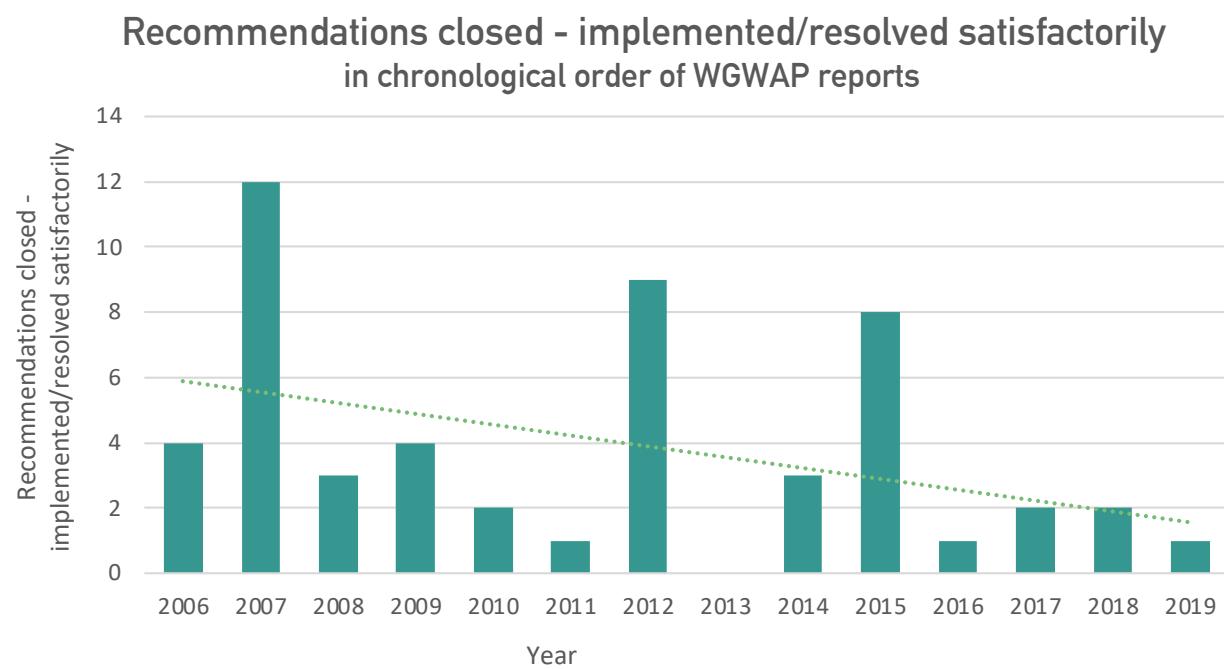


Figure 4. Recommendations closed - implemented/resolved satisfactorily in chronological order

Satisfactorily closed recommendations varied widely over time, but only six of the 52 were closed after 2015. There are many possible explanations — all the important issues were already resolved, there was not enough time to implement more complex recommendations, etc. — but this does support a view that the company's propensity to implement recommendations dropped off in the last five to six years of the Panel.

Interviews were nearly unanimous that three of the most significant results of the WGWAP process were the re-routing of the pipeline, minimising impacts of seismic surveys, and minimising risk from vessel traffic. The following reviews those three results.

## B. Case Studies

*Three of the most significant results of the WGWAP process were the re-routing of the pipeline, minimising impacts of seismic surveys, and minimising risk from vessel traffic.*

### 1. Re-routing an undersea pipeline

Over the lifetime of the Panel, many stakeholders noted that Sakhalin Energy's decision to follow independent scientific advice by re-routing a pipeline to avoid the Western Gray Whale feeding ground was one of the signature successes and legacies of the WGWAP. Interestingly, this decision came in response to a recommendation of the ISRP, before the official launch of the WGWAP itself.

Conflict over Sakhalin Energy's potential impacts on Western Gray Whales came to a head in 2004, when the company considered construction of a platform near, and an undersea pipeline through, Western Gray Whale feeding grounds. Scientists assessed that construction and operation of the pipeline through the feeding area would entail numerous risks to Western Gray Whales, including noise disturbance, ship strikes, damage to benthic habitat, and exposure to oil spills.

As a result of appeals from scientists and NGOs, potential lenders became concerned about impacts on Western Gray Whales and whether financing the project would violate their environmental guidelines. Subsequently, and at the request of Sakhalin Energy, IUCN convened an Independent Scientific Review Panel (ISRP) to provide advice on the issue. The ISRP reviewed three potential routes, concluding that an alternative route would minimise risks from noise disturbance, ship strikes, and damage to benthic habitats. For the risk of exposure to oil spills, the alternative would minimise impact on sensitive nearshore habitat but increase overall likelihood of a spill due to the greater length of the pipeline. Following scientific advice, Sakhalin Energy chose the most precautionary alternative at considerable cost, and re-designed the route of the undersea pipeline to avoid the feeding grounds.

The success of the ISRP in minimising impacts on Western Gray Whales created the momentum and agreement to establish the WGWAP, a long-term scientific advisory Panel. This recommendation was then codified in the loan agreement between Sakhalin Energy and its lenders.

### 2. Minimising impacts from seismic surveys

Noise has a significant impact on Western Gray Whales. Since seismic surveys — which Sakhalin Energy conducted regularly throughout the course of the project — produce large amounts of underwater noise that can disturb cetaceans, the Panel identified Sakhalin Energy's noise impacts from seismic surveys as one of its most significant concerns. As a result, the WGWAP has regularly discussed this issue and made numerous recommendations to Sakhalin Energy concerning ways to minimise such impacts.

The WGWAP made 37 recommendations to Sakhalin Energy regarding seismic surveys. Just over 50% — 19 recommendations — were classified as implemented or resolved satisfactorily. Some of these were particularly important. For example, in both 2008 and 2016, the WGWAP recommended an Independent Observer role for seismic surveys, a recommendation accepted by the company, which stated that it would be pleased to work with the Independent Observer. (WGWAP recommendations database)

In 2018, the Panel emphasised that the best way to effectively reduce the overall exposure of whales to noise is by reducing the strength of the sound source itself; Sakhalin Energy executed source reduction tests to assess the potential to reduce source levels. The Panel, based on a recommendation from the Noise Task Force, recommended adding precaution based on uncertainty in modelling and recommended an exclusion zone with a radius of one kilometre. The company agreed, and the exclusion was approved in the Russian Federation State Environmental Impact Review.

The collaborative relationships developed through the Noise Task Force between Sakhalin Energy staff, contractors such as JASCO, and Panellists were critical to the progress made towards minimising impacts to Western Gray Whales. Some stakeholders noted that the high level of collaboration on the seismic issue contrasted with that of the early years of the Panel, when they observed greater confrontation between the WGWAP and Sakhalin Energy. In those years, these stakeholders saw a pattern where Sakhalin Energy did not implement the recommendations as fully as the Panel wanted, or seemed to delay providing documents and materials. These stakeholders noted that collaborative relationships led to better outcomes.

*The adoption of advanced mitigation measures that the Panel had a contributing role in designing can be correlated unambiguously with a reduction of the noise exposure of the whales during seismic surveys, both on an instantaneous and cumulative basis. This is demonstrable by comparing the validated model estimates of sound exposure of the whales from the seismic surveys as executed against a baseline scenario where the mitigation measures had not been applied. (Sakhalin Energy staff)*

The collaborative work to minimise impacts from seismic surveys led to a new industry practice, according to several stakeholders. Interviews with those involved in the work showed that contractors for other companies were required to comply with these standards. In 2016, based on this work, IUCN published a practical guide for managers that encapsulated planning strategies to manage environmental risk associated with geophysical and other imaging surveys. In the words of one interviewee with extensive knowledge of the issue:

*All the standards were raised up, which ended up with a significant achievement of the Panel. The 2010 seismic survey mitigation standard is the golden standard for industry even now, ten years after. It's unprecedented.*

While this work represents an important step for the industry, Panellists are clear that no one knows the ultimate impact of these practices on the whales themselves. The last report of the Panel reiterated this concern:

*the Panel remains concerned about the statement on page 29 of the MMPP [Marine Mammal Protection Plan] stating categorically that the Company's noise-generating activities have had no effect on gray whale abundance and distribution. The Panel does not agree with this statement and stands by its previous conclusion...[that] it was not possible to perform accurate statistical analyses to assess the relationship(s) between noise and gray whale occurrence. (WGWAP-21)*

So, while nearly all informants saw these advances as noteworthy and important, the science is not yet clear to what extent they have in fact reduced impacts on the whales.

### 3. Minimising risk from vessel traffic

From the earliest days of the WGWAP, Panel members were concerned about ship strikes from vessels associated with oil and gas development. Vessel strikes are one of the most important direct lethal threats to Western Gray Whales, so practices that reduce the likelihood of them are helpful.

*I think it was a very important contribution when they introduced corridors for transit of all the service vessels, introduced limitations on speed, limitations on movement at night time. (Panel member)*

*[Recommendations about] crew replacement, how those vessels had to traverse to the platforms, I think they were implemented very well, in the sense that personally, I thought they went over the top because they sacrificed the health of staff traveling on those boats [due to sea sickness] to minimise the risk that anything would happen with an encounter with a whale, because velocities, the speeds of traveling were very low, and these vessels didn't deal well with those velocities, making it a very rough ride for the people on board. (Sakhalin Energy staff)*

Many people interviewed noted that when Sakhalin Energy started its construction and extraction operations, Russian government authorities had little experience with offshore oil and gas operations. Basic requirements, such as the presence of marine mammal observers on board vessels, were not required by Russian law or practice. Sakhalin Energy's commitment to vessel speed limitations and use of marine mammal observers — informed and enhanced by the WGWAP — created a precedent that Russian regulators and other offshore companies rely upon in other projects.

In total, the WGWAP made 57 recommendations regarding vessel traffic and marine mammal observation. Of these, 33 (58%) were implemented or resolved satisfactorily. Only four recommendations (7%) were no longer relevant but had not been implemented satisfactorily, and two recommendations (3.5%) were closed with reservations. More than 80% of the recommendations about vessel traffic and marine mammal observation were made in the early years of the Panel.

As opposed to the pipeline, however, which required a one-time decision by Sakhalin Energy, minimising risk from vessel traffic requires constant attention and continues to be discussed by the Panel. One Sakhalin Energy staff member noted that by 2015, Sakhalin Energy had not adequately implemented its Marine Mammal Observer programme with qualified observers, and attention from the Panel helped to spur necessary improvements. A Panel member noted that Sakhalin Energy would "stonewall" by not providing clear answers in response to questions about data regarding ship movements and marine mammal observations.

Important discussions about minimising risk to Western Gray Whales from ship strikes continue to this day. Sakhalin Energy provisionally increased the speed limit for crew change vessels, from 21 to 35 knots, over a two-year period, pending a more refined risk analysis. However, the Panel noted that the two-year provisional period has expired without resolution, and recommended considering modified speed limits for parts of the corridor with a regularly high presence of whales. This issue highlights the nuance embedded in recommendations, and the ability for stakeholders to interpret WGWAP statements in their own interests. Sakhalin Energy staff highlighted that the panel closed its recommendation on speed limits for crew change vessels and, at its 2020 meeting, noted that the density of whales on the vessel routes appears to be sufficiently low that strikes would be acceptably rare. However, at the same meeting, the panel noted questions about data and stated that it continues to believe additional work is needed on this issue.

Chronic threats to Western Gray Whales, such as risks posed from vessel traffic, require regular monitoring and oversight to ensure that best practices are maintained.

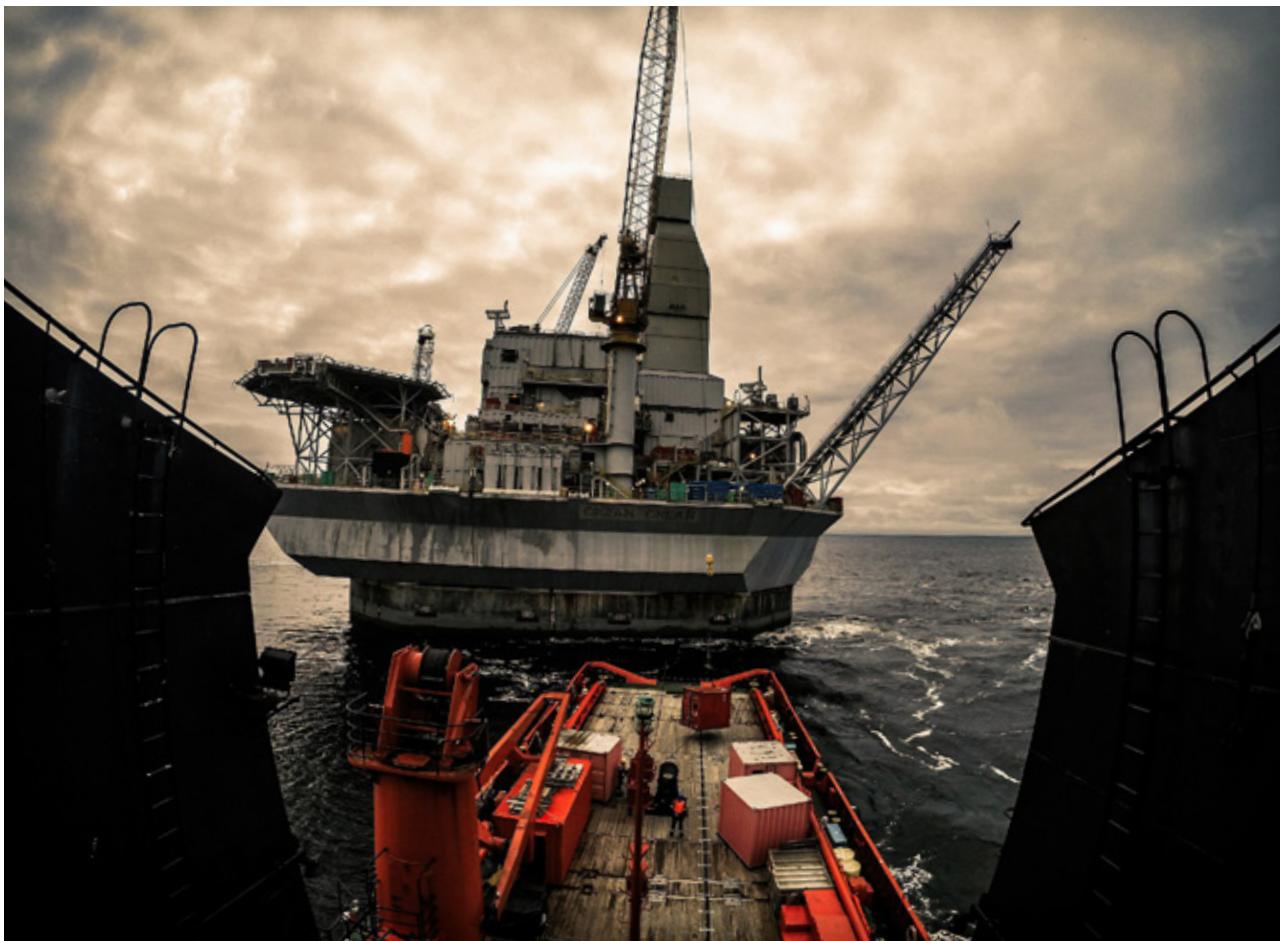


Photo by Maksim Safiullin (via Wikimedia Commons)

## V. Relevance and Effectiveness (Other Stakeholders)

Although the WGWAP was created at the behest of lenders who wanted to minimise the risks of impact from Sakhalin Energy's operations to Western Gray Whales, the Panel's remit included a comprehensive approach to ensuring conservation of the population and intended engagement with other companies on the Shelf, as well as stakeholders both in Russia and range-wide. From the outset, the WGWAP aimed to also minimise the impacts of other threats and other actors on Western Gray Whales. Compared to the WGWAP's relevance and effectiveness with regards to Sakhalin Energy, however, the WGWAP's relevance and effectiveness with regards to other threats and other actors was mixed.

*Compared to the WGWAP's relevance and effectiveness with regards to Sakhalin Energy, however, the WGWAP's relevance and effectiveness with regards to other threats and other actors was mixed.*

## A. Minimising impacts of other oil and gas companies on Western Gray Whales

On the whole, survey respondents scored the statement that “the WGWAP helped other oil and gas companies minimise their impacts on Western Gray Whales” a 6 out of a possible 10 — notably less than the 8 average score for the same question about Sakhalin Energy (see Figure 5). Respondents also demonstrated a wide variation in their responses, from a 2 to a 10, though over 50% of respondents scored the question either a 6 or 7. Sakhalin Energy respondents scored this question the lowest, with an average response of 5.3, while members of the WGWAP had an average response of 6.5. Other stakeholders had an average response of 6.1. The Standard Deviation of 2 was slightly higher than that of the same question about Sakhalin Energy, suggesting there was less consensus on this issue.

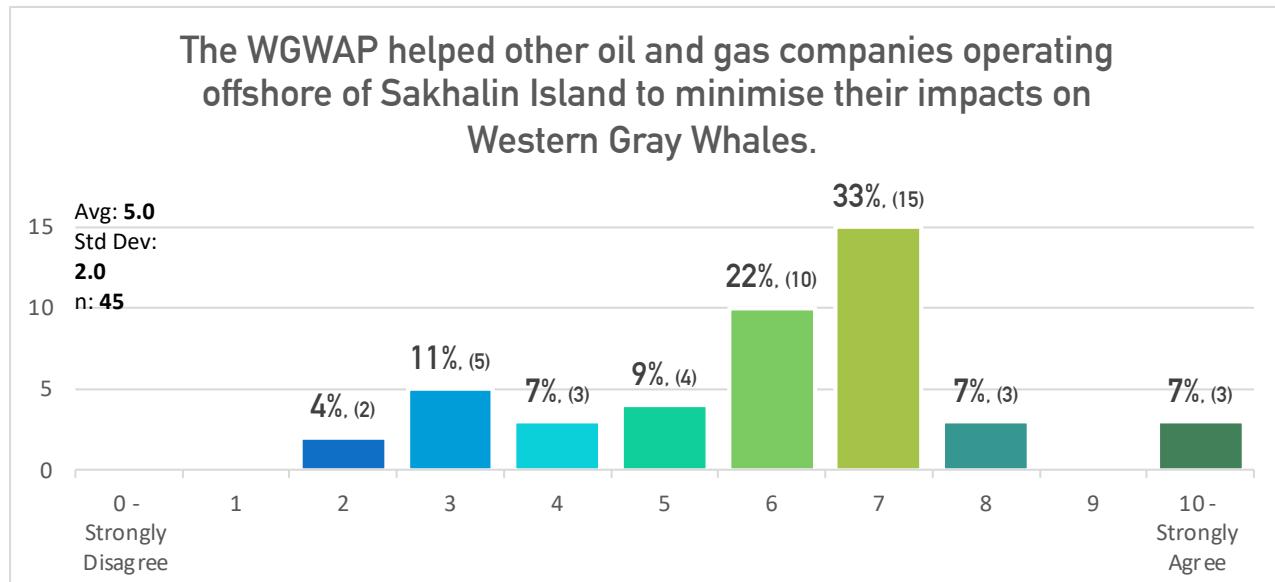


Figure 5. The WGWAP helped other oil and gas companies operating offshore of Sakhalin Island to minimise their impacts on Western Gray Whales

Qualitative interviews showed a belief among stakeholders that the WGWAP had some impact on other oil and gas companies, though the impact was often indirect and difficult to measure. For example, many stakeholders suggested that the WGWAP’s attention to Western Gray Whales encouraged Exxon to spend more resources and attention on Western Gray Whales than it would have otherwise. Company insiders suggested that Exxon required its contractors to follow the same standards as Sakhalin Energy for seismic surveys, though whether that was due to company or Panel influence, or simply keeping up with industry development, is unknown. Exxon did not respond to multiple requests for interviews, making it impossible to determine whether Exxon would agree with this perspective.

*Exxon developed a Joint Programme for monitoring whales. The Joint Programme for study and monitoring of gray whales was very important. The Panel definitely influenced Exxon in terms of getting it to study whales. But I don't recall that the Panel made other recommendations that were implemented by Exxon — like moving the dates for seismic testing, or changing their plans. Of course, Exxon had observers on ships, but I would call this a base level of whale conservation. Nonetheless it's useful. It's better than not having observers. (NGO Observer)*

*Exxon has a programme for monitoring, even if it doesn't have a relationship to the Panel. That's thanks to the WGWAP process. (Scientific observer)*

Nonetheless, even if the Panel had a modest indirect impact on Exxon by causing it to increase monitoring and research of Western Gray Whales, Exxon consistently rejected Panel advice regarding minimisation of notable key risks to Western Gray Whales, such as pier construction in Piltun Lagoon.

Furthermore, the WGWAP meeting reports regularly criticised Exxon for not fully sharing data with the WGWAP. Exxon's role in the Joint Programme created barriers for Sakhalin Energy to share data with the WGWAP, hindering the Panel's efforts.

*Gazprom Neft's transparent and open engagement with the WGWAP earned it reputational benefits among several different groups of stakeholders, while also providing Gazprom Neft access to world-class cetacean specialists.*

A notable change since the 2018 evaluation has been the active engagement of Gazprom Neft. Gazprom Neft started exploring the Sakhalin III area, and began attending WGWAP meetings in 2018. Numerous stakeholders commented that Gazprom Neft shared information in a transparent manner with the WGWAP and welcomed recommendations, leading to plaudits from different stakeholder groups. We noted that Gazprom Neft's transparent and open engagement with the WGWAP earned it reputational benefits among several different groups of stakeholders, while also providing Gazprom Neft access to world-class cetacean specialists. One oil and gas company representative said:

*Participation in these meetings increases the status of any work. It speaks to the quality of the work, it's possible to present it to a scientific community, where the work is evaluated.... In my opinion, a responsible resource user is not afraid to participate in this platform. For [Gazprom Neft], that was important.*

A Panel member added:

*It seems to me that Gazprom Neft chose an approach that is relatively public. I like the fact that, based on the results of the Panel, a company that just came to the region was planning their work, looked at recommendations of the Panel, visited Panel meetings and was ready to listen to recommendations...I think the role of the Panel was very important in this, it was a platform to discuss and listen.*

Interviews confirmed that collaborative relationships between the WGWAP and Sakhalin Energy showed Gazprom Neft staff that there was value in engaging with the Panel. Issues discussed between the Panel and Gazprom Neft included acoustic monitoring, photo identification, transportation corridors, and research into the prey base. The WGWAP also provided a discussion platform for coordination between companies and discussions with NGOs.

Although the WGWAP has had some impact on other oil and gas operators, the Panel itself acknowledges that the lack of effective cooperation prevents greater impact on conservation efforts. In its 2020 meeting report, the WGWAP stated:

*The lack of cooperation, coordination and even basic sharing of information on activity schedules among the industry operators in the region hinders any serious effort to assess and manage cumulative effects on the gray whales and their habitat. (WGWAP-21)*

## B. Minimising impacts of actors in other sectors on Western Gray Whales

Stakeholders had less confidence in the WGWAP's relevance and effectiveness regarding the impacts on Western Gray Whales from other commercial actors (Figure 6). Survey respondents scored this question a 4.5 out of possible 10, or a "slightly disagree." This question also showed wide variation in responses, with stakeholders scoring from a 0 (strongly disagree) to a 10 (strongly agree).

The WGWAP helped companies of other commercial sectors, operating offshore of Sakhalin Island, to minimise their impacts on Western Gray Whales.

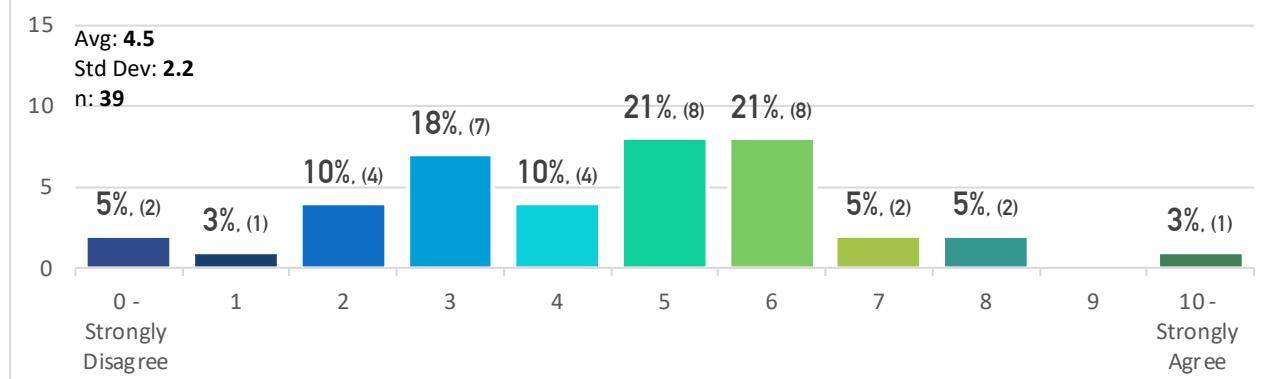


Figure 6. The WGWAP helped companies of other commercial sectors, operating offshore of Sakhalin Island, to minimise their impacts on Western Gray Whales

*No representatives from other sectors regularly participated in WGWAP meetings, showing a general lack of interest in the Panel.*

No representatives from other sectors regularly participated in WGWAP meetings, showing a general lack of interest in the Panel. Although the WGWAP attempted to address some of these issues through recommendations and publications — notably taking a lead role in publishing scientific articles about the entanglement risk to Gray Whales from commercial fisheries in the Russian Far East (2018), and the co-occurrence of Gray Whales and vessel traffic in the North Pacific Ocean (2021)— we were unable to find evidence that the WGWAP impacted practices or minimised risk in these sectors.

*Fishing companies threaten Western Gray Whales due to fishing gear they put out. They haven't been influenced much by the Panel, but instead by NGOs and Sakhalin Energy. Sakhalin Energy worked with NGOs, wrote letters, advocated at public meetings, at the ecological council, even cooperated with NGOs to prepare documents. So, tangentially the Panel influenced fishing companies, but through Sakhalin Energy, not directly. (NGO observer)*

*The idea of involving fisheries companies is more about speculation...than real conservation...there's no impact from the Panel on fisheries. (Scientific observer)*

## C. Influencing the Government of the Russian Federation on Western Gray Whale conservation

Stakeholders believe that the WGWAP had some influence on the Russian Government to encourage increased conservation of Western Gray Whales. Survey respondents scored their agreement to this statement an average of 6.5 out of a possible score of 10, or somewhat agree. Survey respondents also showed a wide variety of opinions in how they scored this question, with answers ranging from 1 to 10, and a Standard Deviation of 2.3 (Figure 7).

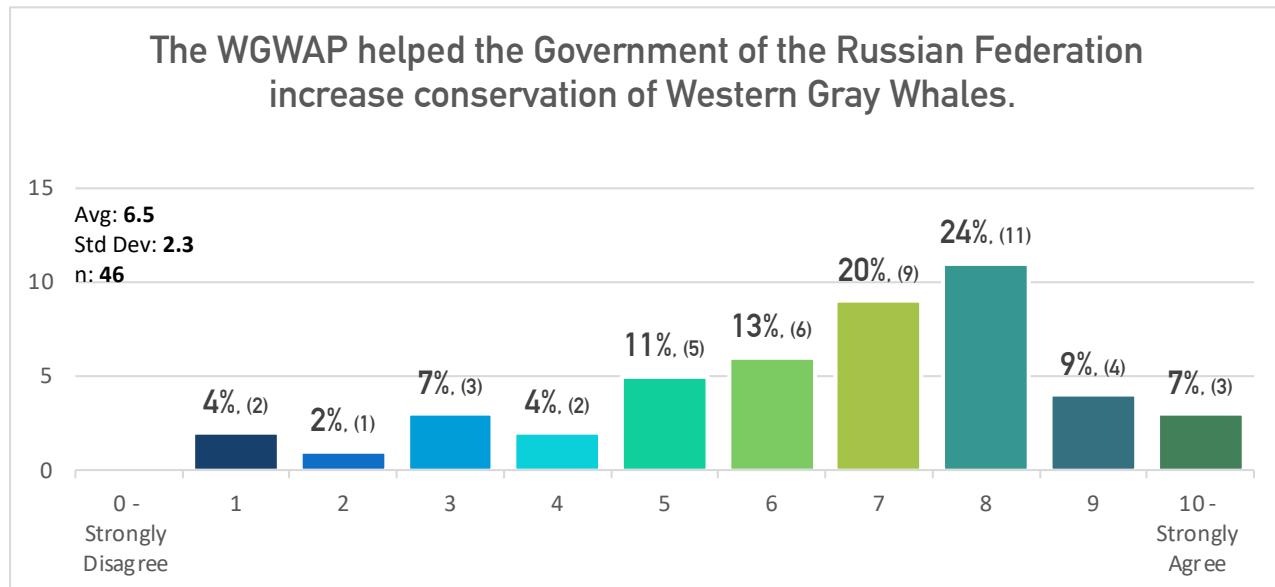


Figure 7. The WGWAP helped the Government of the Russian Federation increase conservation of Western Gray Whales

Some stakeholders noted that, when the WGWAP began, the Russian government had little experience regulating the impacts on marine mammals from offshore oil and gas operations. The WGWAP provided recognised expertise that focussed attention on the issue and helped develop precedents for mitigating these impacts.

Qualitative interviews suggested that the Russian government used some experience developed during the WGWAP process to inform regulators, particularly when requiring mitigation measures of new offshore oil and gas projects. Several stakeholders believe that the WGWAP experience is relevant to offshore oil and gas projects in other parts of the Russian Federation, such as the Arctic, though this view is not universal.

*The WGWAP strengthened Russian scientists, who now are bringing that knowledge into regulatory documents. (Sakhalin Energy staff)*

*In general, there's no standard process or policy about monitoring of whales and seismic surveys in the country. After Sakhalin Energy started with the WGWAP process, and Russian authorities participated in that, they started to demand similar things. They started to demand it of Rosneft, Transneft, Exxon, other smaller companies. They have observers on ships — that's a minimum, that they have observers during seismic testing. And in the Arctic, they carry out some monitoring focussed on not causing harm to marine mammals. (Panellist)*

*Companies in the Russian Arctic are also paying attention to the Panel, they want to use this experience. Everyone pays attention to Sakhalin Energy and its strategy to protect species. Many just copy this experience for other species. That relates to Yamal LNG, Lukoil, different companies that are working in the marine area. (Scientific observer)*

*I don't think that this experience will be used by Arctic companies. I think we need to push companies toward this. There are companies that have corporate programmes, but they don't have a Panel like this. Not all of them are trying to create this mechanism. (Government representative)*

*The government is distributing this work within the WGWAP to all the other companies involved on the Russian shelf — all oil companies, in the Arctic, and the Caspian as well. [The government] wants this experience to be used everywhere with large cetaceans. (Government representative)*

Over most of the life of the Panel, the WGWAP did not have close working relationships with the Russian government. Previous evaluations found low levels of engagement by Russian federal authorities in the WGWAP. In hindsight, this was perhaps not surprising: a private arrangement between an oil company, its lenders, and an international NGO that does not involve the regulator was not necessarily something the government would want to devote resources to. Yet some kind of relationship was important to whale conservation.

**“**  
*One of the results of the Panel is that now [the Russian government] is creating a strategy for conservation of gray whales.*

— Marine mammal scientist

Since 2018, cooperation between the WGWAP and Russian federal authorities has become much stronger; credit should be given to all parties for fostering these relationships. Several stakeholders noted the importance of having a well-respected international institution with credibility among Russian government officials, like IUCN, to promote these relationships. A marine mammal scientist pointed out that:

*One of the results of the Panel is that now [the Russian government] is creating a strategy for conservation of gray whales. The Ministry is cooperating with IUCN, specialists are involved. I think the movement in this direction is great; it has an effect on the national level.*

A government official observed that:

*In the Ministry [of Natural Resources and the Environment], people are very busy. Simply focussing someone on an issue without an official order is difficult. The WGWAP is not an official body, but it played a role where officials had to be involved, to address potential threats, and to come up with preventative measures.... The Panel helped encourage [the Ministry] toward that, since it was the only expert group that worked specifically on marine waters.*

Another government official added that:

*The experience with the WGWAP was very helpful. Based on this, [the government] created the business and biodiversity group within the National Ecology Project, to work with all companies — not just with gray whales and marine mammals, also terrestrial.*

Emerging cooperation between IUCN, the WGWAP, and Russian federal authorities regarding the new strategy for conservation of Western Gray Whales, under development by the Russian government, is discussed in more detail in the Conclusion and Recommendations section.



Sakhalin Lighthouse | photo by Yaroslav Shuraev (via Wikimedia Commons)

## VI. Institution-wide learning

This section contributes to consolidating institution-wide learning as to what worked and what did not in order to help design new ISTAPs. In particular, it assesses whether the setup of the WGWAP — in its initial form and its subsequent developments — was the most appropriate to achieve its mandate and pursue its overall goal.

### A. Were the Terms of Reference clear and fit for purpose?

The Terms of Reference (ToR) for the Panel were partially clear and fit for purpose. The ToR for Sakhalin Energy, the Panel, and IUCN were clear and fit for purpose, but the inclusion in the ToR of other actors and industries was unrealistic and in fact unfulfilled, as the survey results discussed above suggest.

All participants were aware of this issue, and attempted to manage it in different ways. The Panel considered threats to Western Gray Whales beyond the oil and gas industry, made recommendations, and produced publications on best practices. Yet implementation was weak, since the parties capable of taking action were not parties to the Panel agreement. The third evaluation of the Panel in 2014 made a number of recommendations on this point. The evaluation recommended limiting the mandate of the Panel considerably: “to understand and minimise the impact of company activities on the Western Gray Whales population, both during oil and gas development and routine production operations.” The evaluation also

recommended convening a group of key stakeholders to map out future operations, and to promote a general environmental forum for Sakhalin that would cover issues wider than Sakhalin Energy's impact on Western Gray Whales. It also recommended a smaller Panel with more rotation of members.

As a result, the Panel engaged in a series of consultations with key stakeholders on changes to the format and function of the Panel, and the ToR were revised. However, the revised ToR laid out more specific roles for the Panel, IUCN, and Sakhalin Energy, but did not narrow the mandate of the Panel. Instead, the current ToR continued to call on the Panel and IUCN to influence as many stakeholders as possible throughout the range including threats beyond those posed by oil and gas operations.

While the ToR laid out clear roles, it did not lay out a Theory of Change – a concept of how the activities of the WGWAP would in fact promote conservation of whales. As we noted in the 2018 evaluation, our examination of the activities of stakeholders showed that they were actually operating under an implicit Theory of Change that differed from the ToR. In practice, we found that the Panel had a goal and three primary, specific objectives that led to the creation of the WGWAP:

Goal: Conservation and population recovery of Western Gray Whales

Objectives:

1. Minimisation of impacts from human activities on Western Gray Whales, principally oil and gas development;
2. Compliance of Sakhalin Energy with the environmental guidelines of lenders;
3. Reduction of reputational risk to Sakhalin Energy and institutions associated with the project, including lenders.

These implicit objectives explain more of the actions and possible motivations of different stakeholders in the work of the Panel than the text of the ToR.

*The structure of the WGWAP, which included only Sakhalin Energy as a formal corporate participant, has limited the ability of the WGWAP to address issues beyond those caused directly by Sakhalin Energy.*

From this analysis and our overall assessment, it is not clear that the structure and design of the WGWAP adequately supported the full implementation of the WGWAP's goal of conservation and recovery of Western Gray Whales. The structure of the WGWAP, which included only Sakhalin Energy as a formal corporate participant, has limited the ability of the WGWAP to address issues beyond those caused directly by Sakhalin Energy. It succeeded in reducing the reputational risk to Sakhalin Energy, and to some degree to Gazprom Neft, but not at all to Exxon.

## B. Was the mandate of the Panel and the boundaries within which it was enabled to operate clear to and fully accepted by all parties?

A similar analysis applies to the degree to which all parties accepted the mandate and boundaries. The actual legal parties to the agreement and the ToR — Sakhalin Energy, the Panel, the lenders, and IUCN — accepted its mandate. But other stakeholders differed in their acceptance of the boundaries over time. Until recent years, Russian regulators had limited engagement with the Panel, despite dogged attempts by IUCN over many years to include them. One informant went so far as to describe a regulator's anger at feeling lectured at by the Panel and usurping the proper regulatory role. As one company staff member

observed, "it didn't strengthen Russian government agencies." Other oil companies also had limited engagement, except for Gazprom Neft in the last couple of years. NGOs and many scientists accepted and valued the Panel.

*Evidence points to Sakhalin Energy spending increased resources and efforts on Western Gray Whales as a result of the Panel, and without the presence of the Panel there would have been little external credibility or legitimacy to its efforts.*

Only Sakhalin Energy was a party to what was, in essence, a private agreement between it and the lenders. And even within Sakhalin Energy, there were staff who did not believe the Panel was necessary or helpful, and that the company would have done just as good a job of protecting whales — and responding to other environmental and social issues — on its own. However, evidence points to Sakhalin Energy spending increased resources and efforts on Western Gray Whales as a result of the Panel, and without the presence of the Panel there would have been little external credibility or legitimacy to its efforts.

In practice, it was at times difficult to say with precision what the mandate was when it came to details of implementation. The ToR set out the general function and roles, but actual implementation required continual discussion among the Panel, company, and lenders. The lenders walked a delicate line between monitoring compliance with the loan and supporting a viable business. The lenders contracted Ramboll to monitor compliance with the loan agreement, which called on the company to 1) abide by Equator Principles and International Finance Corporation (IFC) Standards, and 2) implement all reasonable recommendations of Panel. The Equator Principles and IFC standards are well developed and written, while Panel recommendations were a moving target, which required Ramboll (and in turn the lenders) to interpret what compliance was.

*The WGWAP process reduced the reputational risk of both Sakhalin Energy and lenders associated with developing and backing such a large project that involved inherent risks to the environment.*

Numerous stakeholders acknowledged that the WGWAP process reduced the reputational risk of both Sakhalin Energy and lenders associated with developing and backing such a large project that involved inherent risks to the environment. A Sakhalin Energy staff person recognised this, saying:

*At the beginning of the project, there was a lot of external world focus on Shell operating in an area for a critically endangered species, a perception that oil companies don't operate responsibly, and you need a Panel.*

They went on to say:

*It seemed like a very expensive insurance policy. Where [Sakhalin Energy] paid a lot to be able to say externally that it has had a Panel looking at this work...My perspective is that money could have been used in a more constructive way.*

We noted that it is a sign of how the fields of corporate responsibility and action against climate change have moved since the WGWAP was created. As of June 2020, IUCN has internal guidance that does not allow it to sign agreements with fossil fuel companies that lack a decarbonisation plan. This fact causes us to question whether IUCN would be able to play the same role if a new project on the scale of Sakhalin-II were to be launched, due to the climate impacts associated with oil and gas development (IUCN Operational Framework for Engagement with the Extractives Sector).

## C. What have been the contributions and added value of 1) the observers and 2) the technical and scientific experts who have fed into the WGWAP process?

NGOs were key in forcing the creation of the Panel in the first place, by lobbying the lenders. They also maintained public scrutiny of the process over its entire life, though some shifted focus to other issues in later years. One scientist observed that until present, “if they [NGOs] want to monitor, I think they can very effectively fulfil that function, watching the companies.”

*NGOs were key in forcing the creation of the Panel in the first place, by lobbying the lenders. They also maintained public scrutiny of the process over its entire life*

The Panel also provided a platform for NGOs to draw attention and action to their concerns. “In recent years there’s a strong development of conservation movement in Russia, specifically Sakhalin Environment Watch,” noted one informant. “If anyone didn’t know Sakhalin Environment Watch and Ocean Friends, now the whole country knows them.”

Together with NGOs, technical and scientific experts were the ones who flagged the issue to begin with, and started discussion of how to manage oil development in the region. Their research over the years provided information and analysis for all parties to the Panel. Yet with so much scientific expertise on the Panel itself, the main effect of external technical and scientific experts was actually the other way: the Panel boosted and supported the efforts of outside experts. One Russian scientist noted that:

*If the Panel had not existed, a lot of the research wouldn’t have been done, we wouldn’t understand the situation with Gray Whales. The Panel forced the research to be done... The Panel was the steam engine that moved that forward.*

However, informants suggested that the Panel could have done a better job earlier on by engaging more with Russian scientists. One company staff member pointed out that “engagement with Russian scientists is a very important part of the work. The process won’t end with the end of the Panel.” Another observed that Russian scientists are embedded in Russian scientific and government processes:

*Maybe they could find better specialists in Europe or America. But my engagement is not just in the theme. Because I understand specifics of Russian science, sometimes I can help with that. I understand the principles of work, communications here, working with government officials. I understand how to facilitate conversations with government. That reduces the tension on these issues. It seems to me that this is very important to have a group of specialists from this country.*

Through the period of the WGWAP, the Marine Mammal Council (MMC) has developed into a respected organisation that convenes leading marine mammal researchers in Russia. Several Russian Panel members have been, and are at present, active members of the MMC. Researchers in the MMC are regularly called upon by government and other stakeholders to assist in conservation efforts, which is important to the future of Western Gray Whale conservation. The MMC did not develop because of the WGWAP *per se*, but it developed simultaneously, and the WGWAP was one forum where key researchers had influence that is now important for the development of a new Russian conservation strategy focussed on Western Gray Whales.

## D. Has the WGWAP process been able to avoid or minimise conflict of interests among the parties involved and build long-lasting trust?

There were no reported conflicts of interest of any participants in the Panel, largely because the IUCN recruitment process makes sure that Panel members have not been associated with oil and gas companies in the area. Yet there have been some built-in conflicts of interest that may have been unavoidable.

First, the entire process is based on funding by Sakhalin Energy, which to some, makes it appear that the Panel is beholden to the company. It is difficult to imagine what alternatives there are to this form of funding in an industrial operation of this size, so that may simply be a fact of life that critics will have to live with. Given reductions in the WGWAP budgets in recent years, this concern suggests that legitimacy of the Panel benefits from transparent discussion of budgets.

Some stakeholders worried also that overall funding for Western Gray Whale conservation – including research efforts and the Joint Programme – is declining, and that effective Western Gray Whale conservation in the future will not receive the dedicated funding streams it requires.

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While the leverage of lenders meant that the company could not just drop the Panel until it had paid back its loans, the company was able to reduce its budget. Sakhalin Energy's completion of loan requirements means that it is no longer required to support the WGWAP, leading to the Panel's planned closure.

Second, there is an inherent conflict of interest as the Russian government is both the regulator and an owner. This dual role became particularly salient after a change in the agreement making Gazprom the majority shareholder. Once Gazprom became the majority shareholder, funding for the WGWAP became a non-recoverable cost under the terms of the Production Sharing Agreement. As a result there was an incentive to reduce expenses of the WGWAP.

In terms of trust, there has been a cautious trust throughout the life of the Panel among company staff, Panellists, and IUCN staff. One Panellist analysed the issue this way:

*I would be careful about the word “trust” — I don’t think this is news that there were complications, difficulties in relationships between Sakhalin Energy and the Panel, and in different years there was tension. Maybe there is some carefulness there. But based on my experience on engagement with other companies, companies are coming to us with proposals to study, at least they want to talk with us.... It started a dialogue, that’s good.*

And a Sakhalin Energy staff member observed that:

*I think that we’ve been able to build trust. Because again, we are transparent as a company. We publish reports and evaluations of impact. We have multi-stakeholder requirements with government agencies and international organisations and also with NGOs — we have a memorandum with WWF, for example. We have a rating of ecological responsibility from WWF. That comes out of this all... We’ve got a greater level of trust.*

And an interviewee with first-hand knowledge of company operations added that “the Panel itself allowed us to address conflict in a way that was non-confrontational, and allowed the whales to continue to be

monitored...That's why you have a Panel, and that's why you embrace the Panel. And even when it's tense and difficult...that's the point."

The level of trust and cooperation among all parties has varied with a few parameters:

- **Personal relationships among company staff, Panellists, and IUCN** — as staff and Panellists turned over, the quality of relationships fluctuated, with corresponding effects on trust and collaboration.
- **Change in ownership of Sakhalin Energy** — following the change in the Production Sharing Agreement (PSA), most participants and observers noted more concern for the costs of the Panel, and there was a perception of a reduced ability of the company to comply with recommendations that would cost money.
- **Time from the end of the loan period** — Panellists and observers reported a sense that the company increased resistance or delayed implementation of recommendations as the agreement approached its end. As one Panellist put it, "*In the past couple of years the air has gone out of the Panel's balloon.... It makes me think that we're just running out the clock.*"
- **Influence of lenders, lender contractor, and NGOs** — The presence of the lenders' contractor provided consistent specialist knowledge and advice, though ultimately the degree of influence depended on the willingness of lenders to enforce compliance with the Panel's recommendations, which most observers suggested faded as time went on.

Ultimately, some stakeholders close to the company pointed out that the role of lenders in creating the Panel and monitoring it over time led to long-term improvements in the company's standards. One said:

*I think the learnings were just huge from Sakhalin. And the experience of realising that no, [the company's] standards weren't up to scratch, let's update our standards. And... realising that working through project financing was a good way to introduce some of these kinds of standards into joint ventures with other parties that maybe wouldn't have had the same brand exposure.*

## E. What could and should have been done differently in terms of the WGWP design and set up as an ISTAP?

Most informants praised the set up and operation of the Panel. They cited the following factors that contributed to the Panel's success:

- Independence of the Panel
- Collaboration on solutions between the company and the Panel
- Recognised expertise of Panellists, including international experts
- Independent facilitator — IUCN
- Funding provided
- Presence of outside observers
- Transparency of discussions, conclusions, and recommendations

Informants also gave suggestions for what could have been done differently

- A clear role for the regulatory agencies
- Inclusion of Panellists with industry experience

- Variation in composition of Panel to follow stages of Sakhalin Energy development (e.g. construction to production)
- Reconcile the narrow focus and broad mandate
- Be creative about “commercial constructs” that bring in other stakeholders without being party to a legal agreement, such as the Joint Programme

One NGO observer said:

*I think you need to use the structure that was used here — IUCN secretariat, independent scientists, money that goes from company, a company desire to get honest opinion from people who don't depend on them, a desire to do the project in a greener way, more responsible. Information should be transparent, because when companies are using their own money, people don't trust the information.*

A Panellist added that “Communication, especially with Russian scientists, was sometimes not enough...The Panel needed to be a bit more involved with the ministry and the promotion of Panel with other scientists.”

Finally, a shareholder noted the value of independent facilitation. “That's why you bring in an IUCN, because you know [without it] ...you wouldn't have had that legitimacy, or even a veneer of legitimacy that IUCN as an independent scientific body” can bring.

As IUCN staff think about advising future ISTAP processes, the framework illustrated in Figure 9 may be helpful in imagining different structures and functions of getting technical advice in contested situations. Examples of ISTAPs include advisors to corporations like the WGWAP, or advisory bodies for government health or environmental policy. There are many ways to obtain advice on the many difficult technical issues that arise in situations where stakeholders differ on the way forward.

## Expert Advice in Contested Situations



Figure 8. Expert Advice in Contested Situations

Figure 8 suggests a spectrum of efforts to get expert advice. As one moves across this spectrum of increasing participation and leverage, there is increased legitimacy for the process, which results in greater credibility outside the organisation. At the simplest level, one can simply organise internal staff as advisors, or hire consultants to give advice about what to do. Yet in contested situations, others outside the organisation, company, or government department are unlikely to trust these specialists or their conclusions. More independent and transparent is a public consultation process, with key stakeholders included. Yet if the consultation is controlled by the entity that runs it, and there is usually no obligation to follow its recommendations, legitimacy is only somewhat increased. External reviews, especially when repeated at regular intervals, increase the likelihood that sceptics will accept the results. Yet in these cases

again if there is no obligation to accept the review's results, many will remain unconvinced. Finally, on the right there are external reviews with leverage, such as loans in the case of the WGWAP or performance standards in the case of the International Finance Corporation or the Forestry Stewardship Council, which provides certification. The WGWAP would fall in this fourth box – "Independent External Review with Leverage" – for Sakhalin Energy, and in the middle box – "Independent Periodic External Review or Verification" – for everyone else.

ISTAPs are independent and provide expert advice, putting them on the right side of this spectrum. This independence and expertise can increase the chances that those with issues about a project or programme will have their concerns addressed.

No two ISTAPs are alike, and even objectives can vary widely. But inclusion of the factors or principles noted above, designed to fall in the appropriate place on this spectrum, should help practitioners design the set-up for the right situation.



Gray Whale | photo by Mikhail Laptev (via dreamstime.com)

## VII. Conclusions and Recommendations

### A. The Future

Sakhalin Energy and IUCN have decided to close down the WGWAP by March 2022. Having paid back its loans, Sakhalin Energy is no longer obligated under its loan conditions to fund the WGWAP process. Despite a wide recognition among stakeholders about the value of the WGWAP to Western Gray Whale conservation, a lack of committed funding will cause the closure.

Prior to its closure, numerous stakeholders recommended that the WGWAP document as much of its experience and information as possible, making this available transparently, in a widely accessible manner. While a website is an obvious tool to make this information available, several stakeholders thought that the existing website does not adequately highlight the outcomes of the Panel, or the recommended articles and publications. IUCN is currently working on a communications strategy associated with the closure of the WGWAP. The “Communication and Outreach Strategy for WGWAP Closing Biennium 2020-2021” currently being implemented calls for IUCN to:

1. Scale up WGWAP science and knowledge by consolidating all documents and tools,
2. Sustain the visibility of emerging Western Gray Whale conservation by raising awareness among key stakeholders, celebrating conclusions and lessons learned, and contributing to range-wide knowledge, and
3. Ensure the success of the Russian Western Gray Whale Conservation Strategy by inspiring stakeholder commitment and ensuring a high level handover to the next phase of conservation.

Many stakeholders would like to see the conservation efforts of the WGWAP continue in some form, post-2021. Stakeholders identified two opportunities to continue these conservation efforts following the closure of the WGWAP:

1. Russian Government conservation strategy for Western Gray Whales
2. Range-wide strategy through the International Whaling Commission

A key element of future conservation measures is funding. The WGWAP benefitted from secure funding that was mandated as part of the loan agreement between lenders and Sakhalin Energy.

Future efforts to conserve Western Gray Whales will require funding to be successful. Focussed discussions among all stakeholders — IUCN, Russian government representatives, Sakhalin Energy, Panel members, and NGOs — can help explore corporate, government, and/or charitable funding streams to support ongoing conservation efforts.

## 1. Russian conservation strategy for Western Gray Whales

*The government determined that the Western Gray Whale population is at risk of extinction and is a top conservation priority, which requires immediate implementation of comprehensive conservation measures.*

In 2020, the Russian government produced an updated “List of wildlife taxa included in the Red Data Book of the Russian Federation.” The government determined that the Western Gray Whale population is at risk of extinction and is a top conservation priority, which requires immediate implementation of comprehensive conservation measures, including the development and implementation of a species conservation strategy, a species recovery programme, and an action plan. The Western Gray Whale population joins the Okhotsk Sea population of Bowhead Whales as the only two marine mammal stocks requiring conservation strategy plans. As part of its National Ecology Project, “Protection of Biological Diversity and Development of Ecological Tourism,” the Ministry of Natural Resources and the Environment (MNRE) created a working group on cetaceans that includes several Russian members of the WGWAP, Sakhalin Energy scientists and, as invited experts, international specialists including IUCN staff. Several stakeholders view the Russian conservation strategy for Western Gray Whales as a key opportunity to develop a roadmap for Western Gray Whale conservation that includes the most important conservation efforts recommended by the WGWAP.

## Range-wide conservation

Recognising the need for a range-wide, comprehensive approach to Western Gray Whale conservation, WGWAP stakeholders have, at various times, encouraged the development of a range-wide approach. Some stakeholders pointed out that the lack of a range-wide strategy is a notable gap in Western Gray Whale conservation. However, a range-wide strategy was clearly beyond the scope of WGWAP itself, which

was designed to be fit for purpose with a focus on conservation issues near Sakhalin Island.

Through the International Whaling Commission, several WGWAP members have encouraged a range-wide initiative that would engage all the range states in conservation efforts. A draft Conservation Management Plan (CMP) for the Western North Pacific Gray Whale was endorsed by the IWC in 2010. At the 2014 IWC meeting, three range states — Japan, Russian Federation, and the United States — signed a Memorandum of Cooperation Concerning Conservation Measures for the Western Gray Whale Population; the Republic of Korea and Mexico joined this Memorandum of Cooperation in 2016. In 2018, several international members of the WGWAP updated the scientific aspects of the IUCN/IWC Conservation Management Plan for Western North Pacific Gray Whales. However, since the Memorandum was signed, there has been little progress in finalising the conservation management plan. Further development would benefit greatly from funding from parties to the Memorandum.

*A range-wide effort through the IWC remains an important opportunity to monitor the conservation status and promote the recovery of Western Gray Whales.*

A range-wide effort through the IWC remains an important opportunity to monitor the conservation status and promote the recovery of Western Gray Whales throughout their range and to bring the best international scientific specialists together within a forum that is intended to facilitate scientific dialogue across borders.

## B. Conclusions

- Western Gray Whale conservation involves a complex array of efforts, within which the WGWAP has played a central role.
- Over the course of its history, the WGWAP has helped foster a dramatically improved understanding of the population, ecology, and conservation requirements of Western Gray Whales.
- The WGWAP spurred both Sakhalin Energy and other oil and gas companies to focus increased time, expertise, and financial resources on Western Gray Whale conservation.
- The WGWAP reduced the reputational risk of Sakhalin Energy and the lenders that provided financial support to Sakhalin Energy for offshore oil and gas development.
- The WGWAP helped Sakhalin Energy minimise impacts on Western Gray Whales from noise, habitat disturbance, and ship strikes. WGWAP recommendations about a proposed pipeline through Western Gray Whale feeding grounds, seismic surveys, and vessel traffic were particularly important to reduce risk.
- Indirectly, the WGWAP helped other oil and gas companies in Russia minimise their impacts on marine mammals:
  - Exxon Neftegas Limited likely focussed additional attention and resources on monitoring Western Gray Whales through the Joint Programme as a result of the WGWAP;
  - Gazprom Neft actively engaged in WGWAP meetings and shared information, benefitting the company by providing it with access to cetacean specialists and reducing the company's reputational risk;
  - WGWAP recommendations informed Russian government regulators about measures to minimise impacts on marine mammals that have been used in Sakhalin and elsewhere in the Russian Federation;

- The WGWAP’s guidance on minimising impacts on marine mammals from seismic surveys has informed industry practices.
- The WGWAP has not effectively engaged other industries, such as the fishing industry, in Western Gray Whale conservation efforts.
- In the last few years, the WGWAP, IUCN, and the Russian government have developed effective cooperation to promote Western Gray Whale conservation. This cooperation is now informing a conservation strategy for Western Gray Whales under development by Russian federal authorities.
- The Terms of Reference for the WGWAP were clear and fit for purpose for Sakhalin Energy, the Panel, and IUCN, but were unrealistic and unfulfilled for other actors and industries.
- To achieve its goals, the WGWAP needed to be both independent of undue corporate, government, and NGO influence and collaborative with corporate, government, and NGO actors. The WGWAP was most successful when it achieved this balance.
- Other important success factors included transparency, the presence of outside observers, inclusion of respected scientists, and the work of a skilled facilitator like IUCN.

## C. Recommendations

1. IUCN, in concert with other WGWAP stakeholders, should document and disseminate as much of the WGWAP’s experience and information as possible, making the information available transparently and in a widely accessible manner through a communications strategy that includes articles, publications, social media, conference presentations, and a website dedicated to Western Gray Whales.
2. The WGWAP should include in the agenda of the November 2021 WGWAP meeting, a dedicated discussion involving IUCN, Russian government representatives, Sakhalin Energy, Panel members, and NGOs to explore funding streams that can support ongoing conservation efforts, and should also develop an action plan to secure necessary funding for ongoing Western Gray Whale conservation efforts.
3. The Russian government should incorporate WGWAP approaches, expertise, and recommendations into its regulatory framework and the conservation strategy for Western Gray Whales currently under development by the Ministry of Natural Resources and Environment. Stakeholders should work with the Ministry to explore opportunities to implement the conservation strategy.
4. Sakhalin Energy should maintain a commitment to IFC Performance Standards, including IFC Performance Standard 1 (“Social and Environmental Assessment and Management Systems”) and Performance Standard 6 (“Biodiversity Conservation and Sustainable Management of Living Resources”). Following the closure of WGWAP, Sakhalin Energy should ensure practices for monitoring and adaptive management that include the involvement of qualified and experienced external experts to verify its monitoring information and implementation of mitigation measures, as called for by the standards.
5. The Russian Government and IWC Scientific Committee members should endorse and champion approval of a comprehensive range-wide initiative and the associated Conservation Management Plan to conserve Western Gray Whales at the IWC. IUCN, NGOs, and Sakhalin Energy should lend their support to this range-wide initiative.

# List of Annexes

**Annexe 1 – Evaluation Matrix**

**Annexe 2 – List of Interviews**

**Annexe 3 – Documents Reviewed**

**Annexe 4 – Outcomes**

**Annexe 5 – Survey Results**