

AWI Comments on Japan's Proposal for a Community-Based Whaling Quota



Background

IWC/65/09 asks the International Whaling Commission (IWC) to allocate Japan a quota of up to 17 minke whales from the Okhotsk Sea-West Pacific Stock. The whales would be hunted by “small-type coastal whaling” (STCW) vessels from four Japanese whaling communities in so-called “*community-based whaling*” operations. The proposal claims that the quota would “*reinstate traditional and local practices associated with catching, processing, distribution and consumption of whale meat, and revitalize traditional festivals and rituals of the regions*”. However, while the proposal claims that the whales would be landed, processed, distributed and consumed locally, it defines local to mean the entirety of Japan.

Since the 1990s, Japan has repeatedly sought a STCW quota for these communities, claiming that they continue to suffer economic and social distress as a result of the IWC’s moratorium on commercial whaling (Schedule paragraph 10 (e)) that came into effect in 1986—even though only two of the towns had previously hunted minke whales.¹

AWI urges contracting governments to reject this proposal for the following reasons:

1. The proposal violates the commercial whaling moratorium

Japan notes that this proposal is “*substantially different in character*” from its previous requests for a STCW quota. Yet, it makes no effort to remove commercial elements from the operation. Instead it

¹ Only Abashiri and Ayukawa have a history of hunting minke whales in their coastal waters although Wada and Taiji provided vessels to assist in hunts in Northern Japan in the middle of the last century.

is trying to frame “community-based whaling” as analogous to Aboriginal Subsistence Whaling (ASW) and therefore deserving of a quota. In addition, the quota proposed by Japan is based on methods specifically designed to set catch limits for commercial whaling, i.e., the Revised Management Procedure (RMP).

The IWC has consistently rejected similar proposals by Japan for a STWC quota at past IWC meetings because the operation proposed was clearly for commercial purposes and would therefore violate the moratorium which prohibits “*killing for commercial purposes*”. This proposal is no different and, therefore, must be rejected for the same reason.

2. The ICJ has rejected non-authorized categories of whaling

As the International Court of Justice (ICJ) recently concluded in *Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)*, the only two types of whaling currently authorized by the IWC are: a) special permit whaling, conducted in conformity with Article VIII of the International Convention for the Regulation of Whaling (ICRW); and b) ASW conducted under Paragraph 13 of the IWC’s Schedule (which forms part of the ICRW).

The court also clearly stated that three provisions in the Schedule, which: a) establish a moratorium on commercial whaling (paragraph 10(e)); b) prohibit factory ship whaling (paragraph 10(d)); and c) prohibit hunting in a designated sanctuary (paragraph 7 (b)), “*are clearly intended to cover all killing, taking and treating of whales that is neither ‘for purposes of scientific research’ under Article VIII,*

paragraph 1, of the Convention, nor aboriginal subsistence whaling under paragraph 13 of the Schedule”.

Thus, according to the ICJ, all whaling, for any purpose, is currently prohibited unless it falls within Article VIII or Schedule Paragraph 13. The court’s rationale for this conclusion is that **“any such interpretation [that other categories of whaling exist] would leave certain undefined categories of whaling activity beyond the scope of the Convention and thus would undermine its object and purpose.”** (Emphasis added)

3. The removals would be unsustainable

Minke whales in the north Pacific comprise at least two and probably more genetically distinct stocks. For years, the IWC’s Scientific Committee has expressed concern about the depleted status of a small population of J-stock minke whales which mixes at certain times of the year with the more populous O-stock and is vulnerable to by-catch and Japan’s special permit whaling in the region. Recent developments in genetic studies also seem to indicate the potential existence of a “J-like” stock of minkes.² The Scientific Committee has yet to fully understand the complex implications of these stocks mixing, making Japan’s proposal premature and irresponsible.

In its proposal, Japan claims that, “[t]he take of O stock animals and the possible take of a small number of J stock animals will have negligible impact on the stocks because the proposed catch limit is based on the RMP and its Implementation Review completed by the Scientific Committee in 2013”. However, this statement is misleading. The Scientific Committee has identified six RMP variants which were “acceptable without research” and four RMP variants which were candidates for being

“acceptable with research”. One variant was deemed “unacceptable”.

Japan generated its proposed quota of 17 minke whales using RMP variant 9, admitting that its goal is to, “maximize catch limits for the Japanese Small Type Coastal Whaling (STCW) communities”. However, following extensive reviews of all ten possible RMP variants, the Scientific Committee determined that variant 9 was found to be acceptable only with additional research (emphasis added). Furthermore, six of the trials of variant 9 (stock-structure C) produced “borderline” results, while its performance was “unacceptable” in 20 other trials. Overall, variant 9 was one of the worst-performing of the variants reviewed.³

All of the RMP simulations identify serious depletion of the J-stock or J-like stocks due to the combination of special permit whaling and “by-catch whaling” (intentional targeting of whales with fishing gear) by Japan and the Republic of Korea. The reported by-catch of North Pacific minke whales is substantial—with 120 takes reported by Japan and 74 by Korea in 2012. It is likely that actual Korean by-catch rates are significantly higher, and possibly double the reported catch.⁴ Nevertheless, despite the IWC’s serious concern about by-catch on J-stock, Japan is using an RMP variant to calculate catch limits which does not deduct by-catch in relevant sub-areas from quotas and therefore could result in higher total removals from the population.

This is of particular concern given that the range of J-stock North Pacific minke whales includes the coastal waters near the communities identified by Japan in its proposal. Moreover, the proposal fails to consider that the IWC has agreed that any whale

² See e.g., Baker, C.S., Hamner, R., Brownell, R., and Wade, P. Stock Structure of western North Pacific minke whales, based on mtDNA haplogroups from 'bycatch' and scientific whaling. SC62/NPM20; Wade, P. and Baker, C.S. A summary of the plausibility of western North Pacific minke whale stock structure hypotheses I,II and III. IWC/SC63 RMP8.

³ J. Cetacean Res. Manage. 15 (suppl.), 2014. Report of the Scientific Committee at p.14. Variant 9 also had ‘borderline’ performances on two out of 39 trials based on stock-structure hypotheses A and B

⁴ See, for example, V. Lukoschek, N. Funahashi, S. Lavery, M. L. Dalebout, F. Cipriano & C. S. Baker. 2009. High proportion of protected minke whales sold on Japanese markets is due to illegal, unreported or unregulated exploitation. Animal Conservation. Volume 12 Issue 5. Pages 385-395

mortality due to by-catch should be deducted from catch limits calculated by the RMP.⁵

Furthermore, should this proposal be granted, Japan has not committed to terminating the hunt by STCW vessels from the same four communities of up to 120 north Pacific minke whales each year in a coastal component of Japan's Research Programme in the North Pacific (JARPN II).⁶

4. Japan is helping Greenland obfuscate the rules for ASW whaling

For decades the IWC has permitted certain groups of indigenous people with a longstanding nutritional, subsistence, and cultural reliance on whaling to hunt whales that are otherwise protected, provided that the whale products are consumed locally and only by the indigenous people whose needs are documented and approved. Although the IWC has accepted that subsistence whalers may have to engage in limited monetary transactions to facilitate the distribution of whale products beyond the remote whaling communities in which they are hunted, its definition of "subsistence use" clearly anticipates that the products of each whale caught in ASW operations will primarily be consumed by the "local community".⁷

⁵ Chairman's Report of the Fifty-Second Annual Meeting. The RMS Working Group agreed to text which stated, "Catch limits calculated under the Revised Management Procedure shall be adjusted downwards to account for human-induced mortalities caused by aboriginal subsistence whaling, scientific whaling, whaling outside IWC, bycatches and ship strikes." p.32. This was then endorsed by the Commission. p.33.

⁶ For example, Special Permit No. 25 Suikan-16 in 2013 permitted the hunting of 60 minke whales off Ayukawa in Miyagi Prefecture in Spring and 60 minkes whales off Kushiro in Hokkaido in Autumn. The whales are taken by STCW vessels from the four communities in Japan's proposal IWC/65/09.

⁷ The IWC concluded in the late 1970s that it needed an objective framework to assess "subsistence need" and assign appropriate catch limits, particularly in respect of a population of bowhead whales in Alaska which faced extinction. The Commission's Technical Committee assembled a Panel of Experts, split into three specialized groups (nutritional, biological and cultural), to advise the Commission on how, inter alia, to determine subsistence need. Based upon its observations of Alaskan and Greenlandic subsistence whaling traditions, the Cultural Panel offered the following definition of

However, Greenland opposes limiting consumption of ASW whale products to indigenous people and rejects the IWC's restriction on their use to the "local community." Instead it interprets "local consumption" (the term used in Schedule paragraph 13 to restrict the use of ASW products) to mean use by all residents of the entire landmass of the territory, both indigenous and non-indigenous.⁸ In Greenland, using this methodology would result in an ASW quota request well in excess of the legitimate needs of its indigenous people in their local communities. If this methodology continues to be accepted by the IWC and is applied in other ASW countries it could result in adverse consequences for the whales.

In IWC65/09 Japan replicates the language in Greenland's quota allocation in Schedule Paragraph 13.b.3 that "meat and products of such whales are to be used exclusively for local consumption". This ignores the fact that this language is not consistent with other ASW quota allocation language – the

'subsistence use', which is set out in an appendix to the Panel of Expert's report (Cultural Anthropology Panel, Report of the Panel Meeting of Experts on Aboriginal/Subsistence Whaling, Report of the Cultural Anthropology Panel, in Aboriginal/Subsistence Whaling 35, 37 (G.P. Donovan, ed., 1982). App. I at 49):

(1) *The personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest.*

(2) *The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural or economic ties. A generalized currency is involved in this barter and [trade], but the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested form within the local community.*

(3) *The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.*

This definition was used as a "working definition" until 2004 when it was adopted by the IWC. However the words "each whale" in the second paragraph was changed to "such whales". The Commission was not made aware of the substitution or its implications at the time of the vote.

⁸ Greenland also supports the selling of whale products to non-Greenlanders including tourists.

ASW quotas for whales taken by natives of the USA and Russia specify that the local consumption shall be “by the aborigines.”⁹

The claim implicit in Japan’s proposal—that community-based STCW whaling and Greenland’s ASW are indistinguishable—and its selective appropriation of text from Greenland’s ASW quotas in Schedule paragraph 13, appears to be a strategy to support Greenland’s claim that “local use” means distribution nationally and that consumption of whale products from ASW operations should not be limited to indigenous people only. Notwithstanding the flaws in Greenland’s interpretation of the term “local,” it is disingenuous of Japan to expand this interpretation to cover the whole of Japan. It is further problematic that Japan considers transport of whale meat across a national boundary as also “local”.¹⁰

Consistent with a strategy to blur the lines between ASW and Japan’s proposed “community-based whaling,” Japan argues that it is contradictory for the IWC to condone limited sales of meat and items crafted from whale by-products from ASW operations, while interpreting that sales of similar items from whales hunted in Japan are evidence of a commercial whaling operation that violates the moratorium. While AWI opposes commercialization of whale meat from ASW operations, it recognizes that limited sales of handicrafts and other items from the byproducts of an ASW hunt can contribute to meeting the cultural needs of the community. The clear difference between this scenario and the one proposed by Japan is that in legitimate ASW the hunters are indigenous people whose sole objective is to enable their native community to meet its nutritional, subsistence, and cultural needs for whales.

Conclusion: If this proposal is adopted its broad definition of “local use” will establish a dangerous precedent for the regulation of ASW, particularly in Greenland.

⁹ Schedule Paragraph 13.b.1 and 13.b.2

¹⁰ Japan asserts in IWC/65/09 that “local” means “consumption within an entire country and even transport of whale meat across a national border.”