

NOAA FISHERIES/CHRISTIN KHAN

CITES STANDING COMMITTEE 69: COMPLIANCE MATTERS

*Japan's Introduction from the Sea
of Sei Whales for Commercial Purposes*



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Sei whales (*Balaenoptera borealis*) are listed on Appendix I of CITES.¹ Japan does not have a reservation for the population of sei whales in the North Pacific. Since 2002, Japan has hunted sei whales in areas beyond the jurisdiction of any State in the high seas as part of its special permit whaling program (formerly known as JARPN and JARPN II, and since 2017 as NEWREP-NP: the “New Scientific Whale Research Program in the western North Pacific”) conducted under Article VIII of the International Convention for the Regulation of Whaling (ICRW). Because these Appendix I specimens are taken in the marine environment beyond the jurisdiction of any State, Japan must issue “introduction from the sea” certificates pursuant to Article III of CITES, which prohibits introductions from the sea of specimens for “primarily commercial purposes.”²

Japan lands these sei whales as pre-packaged products for various purposes at Japanese ports.

Japan issues introduction from the sea certificates for “bodies” and “skin pieces,” (see Table 1); however, it actually introduces from the sea a range of sei whale products, some destined for scientific purposes, but the vast majority of the products destined for sale as either human or animal food.³ Despite the sale of the vast majority of these products, Japan issues introduction from the sea certificates, claiming that these introductions are for non-commercial, scientific purposes.

Since 2002, Japan’s sei whale hunt has been conducted in three International Whaling Commission (IWC) designated management areas—sub-areas 7, 8 and 9 (see Table 2). Most of sub-areas 8 and 9 lie outside the jurisdiction of any State (see map below; a portion of sub-areas 8 and 9 includes the EEZ of Russia). Under JARPN and JARPN II, Japan took 1323 sei whales in sub-areas 8 and 9. In the first year of NEWREP-NP in 2017, Japan took 130 whales in sub-area 8 and 9.⁴

TABLE 1: UNEP-WCMC DATA REGARDING INTRODUCTION FROM THE SEA CERTIFICATES ISSUED BY JAPAN FOR SEI WHALE: 2010–2015

Term	Source Code	Country	2002–2009	2010	2011	2012	2013	2014	2015	2016
Bodies	S	ZZ	674	98	95	100	—	90	90	—
Skin Pieces ⁵	S	ZZ	.068 kg	100g	155g	205g	—	—	80g	—

TABLE 2: IWC DATA OF LANDED CATCHES OF SEI WHALES UNDER JARPN, JARPN II, AND NEWREP-NP IN SUB-AREAS 8 AND 9: 2002–2017

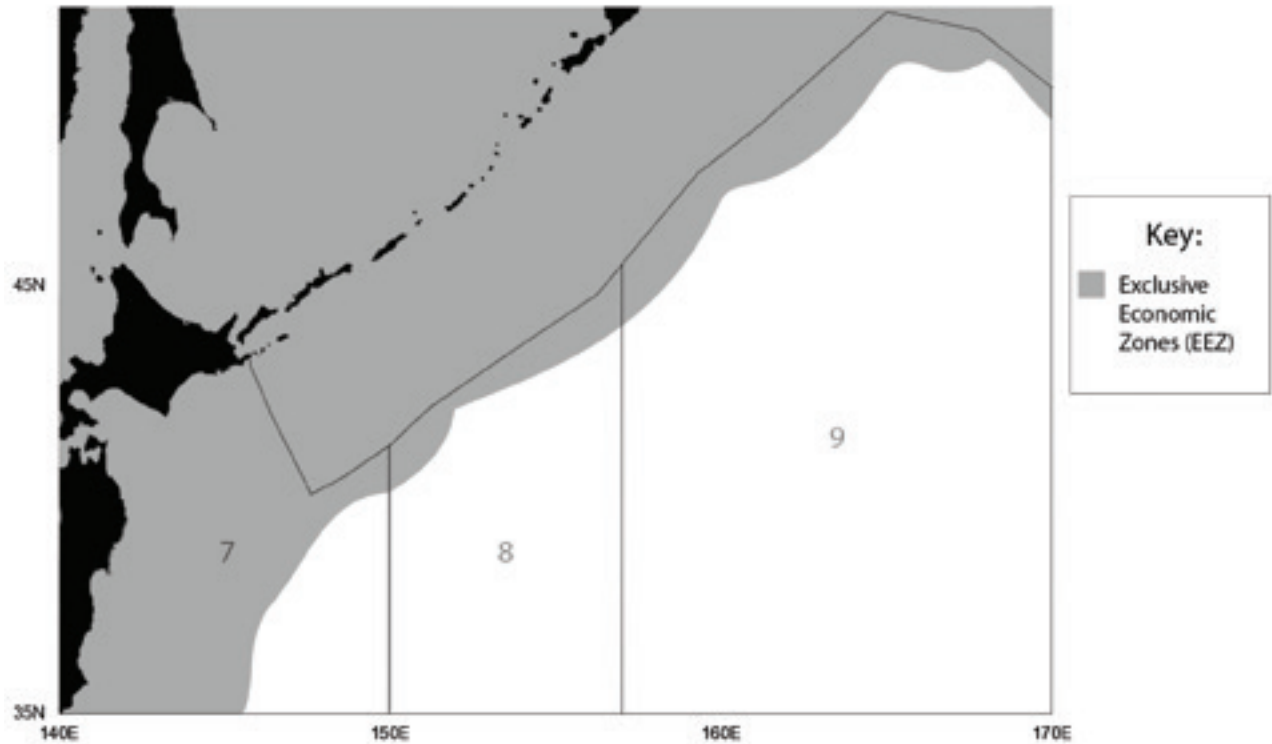
	2002–2007 ⁶	2008 ⁷	2009 ⁸	2010 ⁹	2011 ¹⁰	2012 ¹¹	2013 ¹²	2014 ¹³	2015 ¹⁴	2016 ¹⁵	2017 ¹⁶	Total
Sub-area 8	135	44	31	15	29	36	10	22	17	26	31	396
Sub-area 9	338	56	69	75	65	64	90	68	73	60	99	1,057
Total catches	473	100	100	90	94	100	100	90	90	86	130	1,453

Once the whales are harpooned, they are hauled aboard the Nisshin Maru, the factory ship. After measurements, such as body length and weight and blubber thickness, are taken, the whales are butchered and divided according to type of product.¹⁷ According to its JARPN and JARPN II programs, Japan took sei whales in order to study the stomach contents, testes, ovaries and blubber.¹⁸ According to its NEWREP-NP plan, earplugs, eye lenses, baleen plates, plasma and some organs will also be studied.¹⁹ In addition skin/blubber biopsy samples (>1 gram) will be taken from live sei whales, to test fatty acids and stable isotopes and the hormone and plasma content of blubber. Tissue samples and body parts intended for research are separated from the remainder of each individual

whale. Some biological research is conducted onboard (stomach content analysis) and the rest of the parts intended for scientific research are packaged separately for landing and transport to the Institute of Cetacean Research (ICR), a non-profit institution subsidized by the government.²⁰ Although the ICR is the main laboratory for the scientific research, NEWREP-NP provides a list of “collaborating research institutions.”²¹

Other than these small samples and body parts, ICR does not conduct scientific research on the remaining parts of the whale. Instead, the vast majority of each whale is packaged onboard the Nisshin Maru according to the type of commercially valuable product, such as red meat, white meat, skin,

IWC SUB-AREAS



blubber and *unesu*,²² and various internal organs, including the small intestine, tongue, kidney, and heart.²³ According to ICR data, a sei whale yields approximately 12 tons of edible product. For ease of off-loading and distribution, the meat and the vast majority of the blubber is frozen onboard the *Nisshin Maru* in 15 kilogram (kg) blocks.²⁴ Scraps too small to freeze are packaged and frozen in bags.²⁵ Assuming 12 tons of edible product, each sei whale is offloaded in hundreds of packages.

Japan earmarks the consumable products of its research program for distribution through two different supply chains. Under JARPN/JARPN II between 2003 and 2011, about twenty percent of sei whale meat and other consumable products was reserved for so-called public interest purposes, such as school lunch programs and marketing.²⁶ For these programs, whale meat is sold at a discount and distributed, in part, to establish a consumer base for

whale meat.²⁷ Around 80 percent of the whale meat was sold to wholesalers for distribution to fisheries cooperatives, grocery stores, restaurants, and other retailers.²⁸

According to publicly available information, prices for whale meat and blubber are set annually by the ICR.²⁹ The meat is consigned to *Kyodo Senpaku* (a company that owns the *Nisshin Maru* and catcher vessels and in which the ICR holds shares). From 2006 through at least 2011, it appears that consumable whale products were also consigned to *Geishoku Rabo* (a company established with the support of the Japanese Fisheries Agency, ICR, and *Kyodo Senpaku* to develop new sales channels).³⁰ From 2017, *Kyodo Hanbai*, a subsidiary of *Kyodo Senpaku*, will manage the sale of consumable whale products. This new company was established in order to “improve business, including development of new products and sales channels” for whale meat.³¹



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Appendix I specimens may not be introduced from the sea for primarily commercial purposes.

As indicated by Tables 1 and 2, the vast majority of the sei whales hunted by Japan are hunted outside the jurisdiction of any State and thus landing and introduction into Japan requires an introduction from the sea certificate for any consignments of specimens of sei whale. Article III of the Convention provides that an introduction from the sea certificate may not be issued until the Management Authority in the State of introduction determines that the specimen “is not to be used for primarily commercial purposes.”³²

The Convention does not define the term “primarily commercial purposes,” but Res. Conf. 5.10 (Rev. CoP15), *Definition of ‘primarily commercial purposes*, provides that an activity is commercial if “its purpose is to obtain economic benefit (whether in cash or otherwise), and is directed toward resale, exchange, provision of a service or any other form of economic use or benefit.” Moreover, the resolution specifies

that “all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature.”³³ By using the scientific purpose code “S” to identify the purpose of the introduction of each sei whale, Japan suggests that the sei whales will be used for scientific instead of primarily commercial purposes.

However, the non-commercial scientific aspects do not clearly predominate, as Res. Conf. 5.10 (Rev. CoP15) requires. To the contrary, commercial use is the primary motivation for introducing the sei whales and the sale of consumable sei whale products is the predominant intended use of the sei whales. Certain factors are dispositive in this regard. First, the whale meat and other consumable products are pre-packaged onboard the Nisshin Maru specifically for distribution throughout the whale product supply chain. Second, no scientific research or experimentation is conducted on the meat and other consumable products, indicating that the only value of the products

is commercial, not scientific. Third, the quantity of each sei whale introduced for actual scientific purposes is dwarfed by the amount pre-packaged for commercial distribution. Each sei whale comprises approximately 800 pre-packaged 15 kg blocks, while only reproductive organs, eye lenses, baleen plates, earplugs, stomachs, plasma and small samples of blubber are retained for scientific research after introduction from the sea. Fourth, the Japan Fishery Agency and ICR are actively engaged in a campaign to increase the commercial market for whale meat, explicitly seeking new products, customers, marketing opportunities and sales channels to boost sales revenue. The targets of promotional efforts range from school lunch programs, Halal consumers and middle-aged men seeking an antidote to fatigue.³⁴

While the description of “scientific purposes” in Res. Conf. 5.10 (Rev. CoP15) contemplates “resale or exchange” of scientific specimens, Japan does not meet the requirements for this exception, including that “the scientific purpose for such import is clearly predominant” and “economic benefit is not the primary intended use” of the specimen for the reasons identified above.

CONCLUSION

While it may be permissible for Japan to introduce the portions of each sei whale that are used for scientific research after introduction, it is not lawful to include, under a single introduction from the sea certificate, all of the sei whale products destined for commercial use. The pre-packaged sei whale meat and other edible products, offloaded and then bought and sold, are introduced from the sea for primarily commercial purposes in violation of CITES.

RECOMMENDATIONS

The 69th meeting of the Standing Committee will consider Japan’s compliance with Article III as a compliance matter.³⁵

To ensure compliance with Article III, Japan must immediately suspend its introductions from the sea of sei whale meat and other by-products of its special permit whaling program that are used for primarily commercial purposes. If Japan refuses to discontinue issuing IFS certificates for sei whale meat, SC69 should:

- recommend a suspension of commercial trade in CITES-listed specimens with Japan; and
- urge Japan to confiscate and destroy all sei whale meat either offered for sale or in storage awaiting commercial sale.



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RELATIONSHIP BETWEEN ICRW & CITES

An important distinction exists between CITES and the ICRW. The ICRW regulates the *hunting* of whales, while CITES regulates the *trade* in specimens of listed whale species. Thus, while the ICRW contains provision for the take of whales for scientific purposes, the introduction from the sea of the specimens of sei whales is not automatically or necessarily for scientific purposes. These are two independent inquiries undertaken based on separate facts, as outlined above. Further, while the ICRW provides for the processing of whales taken under special permits, it clearly states that this should occur only “so far as practicable.” If introduction from the sea of sei whales for primarily commercial purposes is in contravention of CITES, the processing of sei whales is certainly not practicable.

¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Appendices I, II and III, valid from 4 April 1975, 27 UST 1087; 993 UNTS 243, available at: <http://www.cites.org/eng/disc/text.php>.

² CITES, art. III(3)(a), signed Mar. 3, 1973, entered into force July 1, 1975, 27 UST 1087; 993 UNTS 243, available at: <http://www.cites.org/eng/disc/text.php>.

³ For example, in 2002 under the JARPN program, the ICR announced it would distribute 195 tons of whale meat for use in public institutions and 506 tons to wholesale markets, to be followed by an additional 724 tons of byproduct. See Institute of Cetacean Research, Media Release, *By-products from Japan's whale research program on sale*, Dec. 6, 2002.

⁴ See Table 2 for citations.

⁵ We assume that these “skin pieces” are the biopsies taken from live whales during non-lethal sampling.

⁶ 2004: SC/57/O3; 2005: SC/58/O8; 2006: SC/59/O5; 2007: SC/60/O5

⁷ SC/61/O4

⁸ SC/62/O4

⁹ SC/63/O2

¹⁰ SC/64/O3

¹¹ SC/65A/O3

¹² SC/65b/SP02

¹³ SC/66a/SP06

¹⁴ SC/66b/SP02

¹⁵ SC/67A/SCSP/04

¹⁶ <http://icrwhale.org/170926ReleaseJp.html>

¹⁷ Email correspondence on file with author (June 29, 2017) (translation from Whale Improvement Project document 39).

¹⁸ The blubber is not retained for scientific study upon landing the specimens of sei whale; a small sample of blubber, ventral groove and intestinal fat is retained to test the lipid content. The blubber is a commercially valuable product that is consumed in Japan. See Institute of Cetacean Research, *Whales as food and Japanese culture* (2007), available at <http://www.icrwhale.org/pdf/59FoodCulture.pdf>.

¹⁹ Government of Japan, Research Plan for New Scientific Whale Research Program in the western North Pacific (NEWREP-NP), at p. 117, 121, 126-27, 133, available at <http://www.icrwhale.org/pdf/170606newrep-np.pdf>.

²⁰ The ICR was established in 1987 when Japan commenced special permit whaling. Start up costs were paid by Kyodo Senpaku and

a grant from the Fisheries Agency. An annual subsidy is paid by the Government of Japan. See Institute of Cetacean Research, Overview and Purpose, <http://icrwhale.org/abouticr.html>; Government of Japan, *Revised Proposed Research Plan for the New Scientific Whale Research Program in the western North Pacific (NEWREP-NP)*, SC/67A/SCSP/10, 43.

²¹ NEWREP-NP, supra note 19, Annex 20, at 137.

²² An accordion-like layer of fat that runs from the throat to the abdomen and is marketed as “bacon.” See *id.*

²³ *Id.*

²⁴ Further processing, including into small vacuum-sealed packages, to increase marketability of products is planned for the remodeled Nisshin Maru. See Planning Document of KKP: Kujira Kaizen Project 2-3 (2012), available at http://www.fpo.jf-net.ne.jp/gyoumu/hojyogijyo/01kozo/nintei_file/H241002_kujira.pdf.

²⁵ Email correspondence on file with author (June 5, 2017).

²⁶ See ICR, Media Releases (2003-2011), <http://www.icrwhale.org/News.html>; see also Junko Sakuma, Sluggish Sales of Whale Meat, Iruka & Kujira (Dolphin and Whale) Action Network (May 22, 2012), <http://ika-net.jp/ja/ikan-activities/whaling/250-sluggish-sales-of-whale-meat>.

²⁷ K. Nakano, To Protect Whale Eating Culture, The Japan Fisheries Agency Supports A Meat Wholesaler to Develop Sales Channels Targeting School Lunches, *Nikkei Sangyo Shimbun*, May 29, 2006, available at Annex 130 of the Memorial of Australia, Whaling in the Antarctic (Australia v. Japan) (May 9, 2011).

²⁸ See ICR, Media Releases (2003-2011), <http://www.icrwhale.org/News.html>.

²⁹ See ICR, *Rules for the Processing and Sale of By-Products of the Cetacean Capture Research Program*, ICR No. 570, (Jan. 12, 2001, as amended through May 31, 2006).

³⁰ See Institute of Cetacean Research and Geishoku Rabo, “New Organization for Whale Meat Sales Promotion,” Press Release (Mar. 2006), http://whaling.jp/press/press06_05.html.

³¹ See <http://www.kyodo-senpaku.co.jp/news/#35>.

³² CITES, supra note 2.

³³ CITES, Res. Conf. 5.10 (Rev. CoP15) *Definition of 'primarily commercial purposes'*, available at <https://cites.org/eng/res/all/05/E05-10.pdf>.

³⁴ KKP, supra note 24.

³⁵ CITES Standing Committee 69, Document 29.1 Compliance Matters.

