



NOAA FISHERIES/CHRISTIN KHAN

# Why the Sei Whale Compliance Issue Should be a Priority for New Zealand at CITES Standing Committee



**CITES** Article III prohibits any international trade, including “introduction from the sea”, of specimens of Appendix I species for “primarily commercial purposes”. The sei whale (*Balaenoptera borealis*) is listed on Appendix I of CITES. Japan does not have a reservation to the Appendix I listing of the North Pacific population of the sei whale so is obligated to comply with all CITES requirements, including Article III. However, since 2002, the government of Japan has overseen and funded the marketing, distribution and sale in Japan of thousands of tonnes of edible products from more than 1,400 sei whales taken by its factory whaling fleet on the high seas of the North Pacific. This is clearly a violation of CITES Article III (5). The relevant facts and legal issues can be found at <http://awionline.org/sei-whales>.

In early 2016, at the request of the European Union (EU), the CITES Secretariat began to examine Japan’s compliance with Article III. Japan did not explain convincingly how it ensures that edible sei whale products are not used for primarily commercial purposes and the issue was referred to the last meeting of the CITES Standing Committee in November/ December 2017 (SC69). The majority of Committee members and observer governments who spoke during the extensive discussion at SC69 expressed, with concern, the view that Japan is not in compliance with Article III (5).

The undersigned NGOs believe that, for the following reasons, this issue should be a high priority for New Zealand as the regional representative at Standing Committee for the Oceania Region.

### **THE TIME IS RIGHT TO ADDRESS THIS ISSUE**

Based on statements made at SC69, a majority of Standing Committee members are already

concerned that Japan is not in compliance. SC70 will be the last substantive meeting of Standing Committee before COP18 when the membership of the Committee will change. With the CoP in 2019, there will not be another Standing Committee meeting to deal with such substantive issues until 2020. **To make the most of this unique opportunity, New Zealand should ensure that discussions of Japan’s compliance are concluded with a strong and unambiguous decision at SC70.**

### **CITES MUST ADDRESS COMPLIANCE ISSUES SWIFTLY AND TRANSPARENTLY**

CITES Resolution Conference 14.3 on Compliance Procedures states that, as a general principle, “compliance matters are handled as quickly as possible” and compliance measures “are applied in a fair, consistent and transparent manner”. In more than two years of discussions, Japan has not provided a satisfactory response to the compliance questions asked by the Secretariat. Although the Secretariat’s technical mission to Japan, requested by the Standing Committee, likely will not yield any new information on this issue, **New Zealand should strongly encourage the Secretariat to make its full mission report publicly available well before SC70.**

The Standing Committee already has all the legal arguments and evidence necessary to conclude that Japan is not acting in accordance with Article III (5) and to demonstrate how it can return to compliance (by not landing the edible sei whale products, and by not allowing any commercial sale in the meat of this species that has been imported). **New Zealand should strongly oppose any attempt to prevent a decision on this compliance matter at SC70.**

### **FAILING TO ADDRESS JAPAN’S LACK OF COMPLIANCE HARMS CITES’ INTEGRITY IN A NUMBER OF WAYS**

#### *The perception of a double standard*

CITES has taken a range of compliance measures against a number of developing countries in recent years. To avoid the perception of a double standard—that CITES tolerates non-compliance from developed countries (especially those which are major contributors to its budget)—the Standing Committee must treat Japan as it would any other country. In fact, this compliance matter should be resolved more quickly than cases involving developing countries because Japan has no need for capacity-building or other assistance to comply with the treaty. **New Zealand’s advocacy for compliance measures against Japan at SC70 would be consistent with the timeline for other current compliance matters and send the message that it expects a high standard of behavior from *all* Parties.**

#### *Preventing the abuse of CITES source codes*

Japan uses the scientific purpose code “S” in its introduction from the sea certificates for sei whales, indicating that all products from those whales will be used for scientific purposes. In fact, the vast majority of each whale (12.7 tonnes of edible products per whale) is destined for sale, a clearly primarily commercial purpose. This sets a terrible precedent for abuse of CITES purpose codes; it is the legal equivalent of importing a rhinoceros as a zoo specimen but then removing and selling its horn. **New Zealand’s advocacy for compliance measures against Japan would send a strong message about the importance of protecting the integrity of CITES rules.**

#### *CITES must protect its strong international reputation*

If politics (including around Japan’s whaling) prevent CITES from ensuring compliance with its core provisions, its credibility as a rules-based international institution capable of enforcing its mandate will be damaged. **New Zealand must ensure CITES rules are applied consistently across issues and by all Parties.**



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## **JAPAN'S STIMULATION OF DEMAND FOR SEI WHALE PRODUCTS CONFLICTS WITH CITES' DEMAND-REDUCTION PRIORITIES**

CITES Parties have recognized the need for long-term strategies aimed at reducing demand for, and consumption of, products of species listed on CITES Appendix I (Res. Conf. 17.4 and Decision 17.44). Japan does the opposite of this; the government actively stimulates consumer demand for Appendix I sei whale products, including by funding sophisticated marketing efforts. New Zealand should strongly oppose activities that undermine demand-reduction efforts.

## **ENSURING THAT JAPAN ACTS IN COMPLIANCE WITH CITES IS CONSISTENT WITH NEW ZEALAND'S UNAMBIGUOUS POLICY RELATING TO WHALES**

For decades, New Zealand has held a leadership role opposing the lethal commercial exploitation of whales, including intervening in a legal challenge against Japan's research whaling at the International Court of Justice in 2014.<sup>1</sup> New Zealand joined a demarche opposing this sei whale hunt when it began in 2002<sup>2</sup> and has led or joined at least five other demarches against Japan's research whaling programs since then (2005, two in 2006, 2015 and 2017) asserting that it undermines international efforts to conserve and protect whales. **New Zealand should seize this unique opportunity to secure protection for cetaceans that supports and furthers its long-established domestic policies.**

As the third largest whale, sei whales are the most valuable species targeted by Japan for its whale meat market; the hunting location is much closer than Japan's Antarctic whaling grounds and sei whales offer an economy of scale in hunting effort over the far smaller minke whale. Japan redesigned its North

Pacific whaling program (NEWREP-NP) in 2017, increasing the number of sei whales to be taken from 90 to 134. This means sei whale meat now represents more than half of Japan's annual catch by landing weight.<sup>3</sup> Seeking a CITES decision that prevents Japan from landing the edible parts of sei whales is consistent with New Zealand's position of preventing special permit whaling being used as a proxy for commercial activities.

***We call on New Zealand to ensure that SC70 determines that Japan is not in compliance with CITES Article III (5) and, if necessary, imposes compliance measures to ensure compliance.***

<sup>1</sup>Whaling in the Antarctic (Australia v. Japan: New Zealand intervening). See: <http://www.icj-cij.org/en/case/148>

<sup>2</sup>7 May, 2002. Joint media release by the Australian Minister for Foreign Affairs and the Minister for Environment and Heritage. The countries which joined Australia in voicing opposition to Japan's scientific whaling program were: Argentina, Austria, Brazil, Chile, Finland, France, Germany, Ireland, Peru, Mexico, Monaco, Netherlands, New Zealand, Spain, Sweden, UK and the US.

<sup>3</sup>Japan currently hunts 170 minke whales in the North Pacific and 333 minke whales in the Antarctic. These minke whales collectively yield 1,609.6 tonnes of edible products (@ 3.2 tonnes per whale). Japan's catch of 134 sei whales yields 1,701.8 tonnes.