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Briefing Note on the Whaling Issue:

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Introduction

Japan and many countries of the world regard whales as one of the marine living resources that can be utilized as a source of food and nutrition in a sustainable manner. We recognize that there are also many countries that choose not to support whaling under any circumstances. However, the IWC Scientific Committee has demonstrated that many species of whales are abundant and that sustainable harvest quotas can be implemented. At the same time we emphasize that we are committed to the conservation of all marine living species and do not harvest species of whales that are endangered, such as the blue whale. Japan's ultimate objective is to establish whale fisheries as a legitimate, well-regulated and carefully managed economic activity. This would allow fishermen in Japan to resume sustainable whale fisheries, but only for abundant species of whales under international control including science-based harvest quotas and effective enforcement measures.

The objective of the International Convention for the Regulation of Whaling (ICRW)¹, confirmed as valid and effective by the International Court of Justice (ICJ) in 2014², is the conservation and sustainable use of whales. Conservation and sustainable use are compatible.

Japan recognizes the fundamental differences in the positions of IWC members regarding whales and whaling. Because of that, the discussions and decisions of the organization should be based on science, international law and respect for cultural diversity, not intolerance. Consistent application of science based policy and rule making together with the principle of sustainable use is the paradigm for the management of living resources accepted worldwide³. Imposition of one's position on others is unhelpful in resolving difficult international negotiations and has led to the current impasse in the IWC.

Japan's policy on whaling and its position in the IWC have been subject to criticism. We believe that much of this is based on misunderstanding and misinformation. The following questions are the most commonly raised/misunderstood points. Our answers follow on subsequent pages.

- 1. Whales are endangered and should not be hunted. Past commercial whaling resulted in over-harvesting and proved uncontrollable.***
- 2. The commercial whaling moratorium prohibits whaling. It is against international law to conduct or attempt to resume whaling.***

¹ The purpose of the International Convention for the Regulation of Whaling as defined in the Convention is "to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry".

² The ICJ judgment, paragraph 56 (<http://www.icj-cij.org/docket/files/148/18136.pdf>)

³ These principles are included for example in the United Nations Convention on the Law of the Sea, Dec. 10, 1982, Agenda 21, June 14, 1992; the FAO Kyoto Declaration and Plan of Action on the Sustainable Contribution of Fisheries to Food Security and the FAO Code of Conduct for Responsible Fisheries, Oct. 31, 1995, and the Convention on Biological Diversity.

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3. *Japan is undermining the conservation objectives of the IWC.*
 4. *The ICJ Judgment prohibited research whaling. Japan's research whaling is therefore illegal.*
 5. *Japan's research is not providing useful or necessary information.*
 6. *Japan's whaling is contrary to world opinion.*
 7. *There is no need to hunt whales for food. Whale meat is only a high priced menu item in expensive restaurants.*
 8. *Japan is buying votes at the IWC with its foreign aid.*
 9. *Japan is using a "loophole" in the Convention to conduct its research whaling. Japan's whale research programs are "commercial whaling in disguise".*
 10. *The IWC has passed numerous resolutions urging Japan to stop its whale research programs but Japan has ignored these.*
 11. *It is not necessary to kill whales to study them.*
 12. *It is not possible to kill whales humanely.*
 13. *Japan is whaling in the "IWC Antarctic Sanctuary" and in waters claimed by Australia and designated as a sanctuary under Australian domestic law.*
 14. *Japan must respond to the political pressure from its major trading partners and otherwise friendly countries.*
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1. Whales are endangered and should not be hunted. Past commercial whaling resulted in over-harvesting and proved uncontrollable.

Response: Industrial-scale whaling has not taken place since the 1970s and demand for whale oil – which drove commercial whaling in previous centuries – barely exists. Today, the market for whale products is entirely different – it is based on food, with limited markets and therefore much less demand. Many species and stocks of whales are now abundant. The IWC’s website (<https://iwc.int/status>, <https://iwc.int/estimate>) that provides stock status of whales and population estimates agreed by its Scientific Committee confirms this. The website includes the following statements; “Thankfully, in most areas for which there are good data, humpback whales have shown evidence of strong recovery towards their unexploited size (which may have been 75,000-100,000 in total), with annual increase rates of about 10% being recorded in a number of areas including off Australia, Southern Africa and South America”, “There are several hundred thousand Antarctic minke whales and thus they are clearly not endangered” and “Assessments of the population status (of fin whales) in the central North Atlantic and off West Greenland have shown populations there to be in a healthy state.”

Past commercial whaling did result in over-harvesting. However, much has been learnt about the science of whales and the science of resource management since that time. The IWC’s Scientific Committee has developed a risk-averse method of calculating catch quotas and this was adopted by the IWC in 1994. This method called the “revised management procedure” (RMP)⁴ together with a monitoring and inspection scheme provide a regime to ensure that future commercial whaling is sustainable and that regulations are followed. Over-harvesting will not be repeated.

2. The commercial whaling moratorium prohibits whaling. It is against international law to conduct or attempt to resume whaling.

Response: Contrary to what is often reported in the media, the commercial whaling moratorium does not deny commercial whaling *per se* and only suspended commercial whaling when it was adopted in 1982. The main reason for the suspension was the lack of good scientific data for the establishment of sustainable catch quotas. Schedule paragraph 10(e), which is the so-called commercial whaling moratorium adopted, is as follows:

“Notwithstanding the other provisions of paragraph10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.”

⁴ RMP is a risk-averse method of calculating quotas for abundant stocks of baleen whales developed by the IWC Scientific Committee and adopted by the Commission in 1994 by consensus. The RMP would allow harvesting only for abundant stocks, has been tested with thousands of simulation trials over a period of 100 years, has built in safety factors to take account of uncertainty (including the impacts of possible environmental changes) and is a feedback system requiring new abundance estimates every 5 years. The RMP is the most conservative and robust system ever developed for the management of any wildlife species.

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The first sentence of this provision sets zero catch limits for commercial whaling, but it does not prohibit commercial whaling permanently. The second sentence prescribes a comprehensive scientific assessment of whale stocks and consideration of the establishment of catch limits other than zero. In other words, paragraph 10(e) is a provision which describes a procedure for the resumption of commercial whaling. Therefore it is legal to pursue the resumption of whaling under Schedule paragraph 10(e).

3. Japan is undermining the conservation objectives of the IWC.

Response: The purpose of the International Convention for the Regulation of Whaling as stated in the Convention (ICRW) is “to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry”. This was confirmed as valid by the ICJ judgment in 2014. The ICRW requires that regulations adopted by the IWC be based on scientific findings to ensure that whaling is sustainable. Consistent with the objective of the IWC, Japan supports sustainable whaling under international control.

Unfortunately, many members of the IWC choose to oppose any whaling irrespective of the science and status of the stocks. Such a position cannot be justified by science and international law, including the ICRW and the ICJ Judgment.

4. The ICJ Judgment prohibited research whaling. Japan’s research whaling is therefore illegal.

Response: The ICJ Judgment ruled against the Second Phase of its Japanese Whale Research Programme under Special Permit in the Antarctic (“JARPA II”) but it does not prohibit research whaling. Indeed, the Judgment stated that “it is to be expected that Japan will take account of the reasoning and conclusions contained in this Judgment as it evaluates the possibility of granting any future permits under Article VIII, paragraph 1, of the Convention” (para. 246). This paragraph shows that the ICJ accepts the legitimacy of a new research project that follows its conditions (“reasoning and conclusions”). Japan’s course of action in submitting a new research proposal (NEWREP-A; New Scientific Whale Research Program in the Antarctic Ocean) is specifically consistent with the Judgment.

The Court also found that the use of lethal sampling *per se* was not unreasonable in relation to the research objectives of JARPA II (para. 224) but that Japan had not done enough research on the use of non-lethal means. The Judgment further noted that resolutions and guidelines adopted by the IWC do not establish a requirement that lethal methods be used only when other methods are not available (para. 83) and the fact that a programme that involves the sale of whale meat and the use of proceeds to fund research is not sufficient, taken alone, to cause a special permit to fall outside Article VIII (para. 94).

5. Japan’s research is not providing useful or necessary information.

Response: This is incorrect. Japan believes that an effective international regulatory regime for whale fisheries should be established because we along with many other nations regard whales as marine living resources that can be harvested in a sustainable manner. For such a regime to be developed and work effectively, it needs to have reliable data on which to base calculations and quotas. NEWREP-A will provide this essential information and the IWC can also draw on the extensive information collected from Japan’s previous program, JARPA II.

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See comments from the IWC's Scientific Committee in footnote 5 and comments from the expert panel that reviewed JARPN II in footnote 6.

Japan's research programs have produced a large number of scientific outputs. For JARPA and JARPA II, in the period 1988-2014 a total of 257 documents were presented to annual and intersessional meetings of the IWC Scientific Committee and other meetings. The number of peer-reviewed papers made in the same period is 133, The number of oral presentations at scientific symposia in the period 1988-2014 is 212. (<http://www.icrwhale.org/scJARPA.html>) For JARPN and JARPN II, in the period 1994-2014 a total of 233 documents were presented to annual and intersessional meetings of the IWC Scientific Committee and other meetings. The number of peer-reviewed papers made in the period 1994-2014 is 99. The number of oral presentations at scientific symposia in the period 1994-2014 is 175. (<http://www.icrwhale.org/scJARPN.html>)

See also list of publications here:

www.icrwhale.org/JARPApaper.htm www.icrwhale.org/JARPNpaper.htm

More than 100 data items and samples are taken from each whale in the research programmes of Japan including ear plugs for age determination studies, reproductive organs for examination of maturation, reproductive cycles and reproductive rates, stomachs for analysis of food consumption and blubber thickness as a measure of condition. These data and the analyses of the data provide us with valuable scientific information on whales and the ecosystem of which they are a part.

Japan submits the results from its research to the IWC Scientific Committee for review every year, again, contrary to the claims of anti-whaling interests. Both the quality and quantity of data from Japan's research programs have been commended by the Scientific Committee. The IWC's Scientific Committee has noted that the programs have provided considerable data that could be directly relevant for management and that the results of these programs have the potential to improve the management of minke whales. The Scientific Committee has also noted that non-lethal means to obtain some of this information are unlikely to be successful particularly in the Antarctic.^{5, 6}

⁵ See for example: IWC document SC/59/REP. 1, Report of the Intersessional Workshop to Review Data and Results from Special Permit Research on Minke Whales in the Antarctic, Tokyo 4-8 December 2006), which is the source of the following quotes:

“the dataset provides a valuable resource to allow investigation of some aspects of the role of whales within the marine ecosystem and that this has the potential to make an important contribution to the Scientific Committee's work in this regard as well as the work of other relevant bodies such as the Convention for the Conservation of Antarctic Marine Living Resources” and,

“the results from the research program have the potential to improve management of minke whales in the Southern Hemisphere”.

⁶ See also, IWC 2009 document: SC/61/Rep 1, Report of the Expert Workshop to review the ongoing JARPN II Programme, which is the source of the following quotes:

“The Panel recognises that an enormous amount of scientific work has been undertaken in the field, laboratory and in analysis during the first six years of the programme.”

“The Panel appreciates the notable amount of effort undertaken and the generally high quality of the sampling programme, resultant data and information from JARPN II studies on whale food habits and prey preferences. These efforts have resulted in valuable datasets that have great potential for concerted analytical work on a broad range of topics, not all directly related to the JARPN II programme objectives.”

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6. Japan's whaling is contrary to world opinion.

Response: General references to “world opinion” are highly subjective. It should be recalled that, in 1992, the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro, reaffirmed the provisions of the Convention on the Law of the Sea, an agreement that permits whaling on the high seas, and explicitly rejected the efforts of anti-whaling nations to exclude whales from the list of resources open to sustainable use and development. Also, at both the 1997 and 2000 Conferences of the Parties to the Convention on International Trade in Endangered Species (CITES), more than half the countries present supported the controlled harvest of minke whales.

People in many countries around the world use whales and small cetaceans (dolphins and porpoises) for food. Even among populations that do not use whales for food there is widespread support for the principle of sustainable use of resources, including whales. China, Russia, Norway, Iceland and many developing countries support sustainable utilization of whales. Anti-whaling appears to be a predominantly western phenomenon in developed countries, many of which were formerly whaling nations and contributed to the large reductions of whale stocks.

7. There is no need to hunt whales for food. Whale meat is only a high priced menu item in expensive restaurants.

Response: The Japanese have been eating whale meat and utilizing whalebones, blubber and oil for more than 9,000 years (Hiraguchi, 2003). Traditionally, whale meat in Japan is associated with lower and middle income families because it provides greater nutritional values than other similar

“The Panel agrees that resultant diet data have the potential to be of great value in determining whale prey preferences, for developing functional response curves when accompanied by simultaneous assessments of prey abundance, and for developing estimates of the impacts of whales on their prey.”

“The Panel agrees that the models as developed thus far are not yet at the stage where they can be used to draw even general conclusions and certainly cannot be used to reliably inform management advice. Nevertheless, they comprised a substantial and laudable effort, and an encouraging start to the necessary process of synthesising the data collected during the programme.”

“The Panel concludes that the JARPN II pollutant studies represent a valuable contribution to our knowledge in this area and acknowledged the considerable amount of work presented.”

“The Panel acknowledged the substantial scope of the genetic analyses undertaken under JARPN II, which provides a uniquely large data set for testing hypotheses regarding stock structure in the target species.”

“The Panel congratulates the Proponents for simultaneously collecting *in situ* sea surface and water column characteristics while conducting the whale and prey surveys, recognising the practical challenges of coordinating these sampling methods on the same ship at the same time. The Panel welcomes these analyses as a good initial attempt at investigating relations with oceanographic features and they encourage the analyses to be continued and expanded. The programme is addressing its objectives and continued work is recommended.”

“The Panel agrees that many of the objectives of JARPN II are relevant to Resolutions of the Commission and that scientific results have been submitted to the Scientific Committee, as requested in several of the Resolutions.”

“The Panel recognises that at present, certain data, primarily stomach content data, are only available via lethal sampling.”

⁷ Article VIII of the ICRW begins with the words “Notwithstanding anything contained in the Convention.....”

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foods. However, since the 1960's, the supply of whale meat gradually declined because of restrictions on whaling and consumption has reduced accordingly. Today's prices for whale meat reflect the market distortions that unnecessarily restrict supply.

Japanese dietary habits, which are deeply rooted in history, show that whale meat has been a protein source as ordinary, everyday food but it also has been treated as a special food with regional and social significance. The total protection of all whales irrespective of their stock status as promoted by some members of the IWC and some environmental and animal rights organizations is exclusive of other views and ways of living. It is contradictory to Japanese cultural values where whale meat is still eaten and where whales are still revered through religious ceremonies and festivals.

In December 1995, 95 States agreed to a Declaration and Plan of Action on the occasion of the International Conference on the Sustainable Contribution of Fisheries to Food Security. Among other things, the Declaration specifically "Call(s) for an increase in the respect and understanding of social, economic and cultural differences among States and regions in the use of living resources, especially cultural diversity in dietary habits, consistent with management objectives". Sustainable whaling and the consumption of whale meat in Japan are fully supported by this Declaration.

In an interview with CNN in January 2014, Japan's Prime Minister Abe said: "In every country and region, there are practices and ways of living and culture that have been handed down from ancestors. Naturally, I feel that these should be respected."

8. Japan is buying votes at the IWC with its foreign aid.

Response: This accusation is false. Japan's foreign aid is not conditional on receiving supportive votes at international meetings. Japan is one of the world's largest donors, providing aid to over 150 countries including a number of countries that are opposed to whaling like Argentina, Brazil, India and Mexico.

Japan views these accusations as part of a campaign of threats and intimidation by animal rights groups against nations that support the principle of sustainable use of all marine resources including whales. The intimidation campaign is designed to reduce the number of votes at the IWC supporting sustainable whaling.

No one should be surprised that nations dependent on the resources of the sea would vote in a similar manner to Japan in the IWC. Contrary to the claims of anti-whaling interests, some of the Caribbean countries that support sustainable use of whales are also whaling nations. They have voted in support of sustainable use of whales because they use cetacean resources as food themselves. Accusations that their votes have been bought are an insult to the sovereignty of these nations to vote as they wish within the IWC.

9. Japan is using a "loophole" in the Convention to conduct its research whaling. Japan's whale research programs are "commercial whaling in disguise".

Response: Research whaling is a fundamental right of every member of the IWC according to Article VIII of the ICRW as confirmed by the ICJ Judgment. It is therefore not a "loophole" in the Convention. Further, Article VIII. 2 requires that research by-products (meat) be processed and sold. This is a legally binding obligation, based on common sense, not to waste the meat.

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10. The IWC has passed numerous resolutions urging Japan to stop its whale research programs but Japan has ignored these.

Response: Resolutions are adopted by the IWC by a simple majority vote. Unlike the IWC's "regulations", which require a ¾ majority, "resolutions" are not binding. Japan considers the past resolutions adopted by the IWC against Japan's whale research programs to have been based on political perspectives rather than science. Furthermore, they were often inconsistent with Article VIII of the ICRW. Such resolutions usually passed by only a small number of votes, meaning that generally half of the IWC opposed them. By contrast, the IWC's Scientific Committee has provided detailed evaluations of Japan's research programs. (See footnotes 5 and 6).

11. It is not necessary to kill whales to study them.

Response: NEWREP-A will involve both lethal and non-lethal research techniques, such as sighting surveys and biopsy sampling. While certain information can be obtained through non-lethal means, other information requires sampling of internal organs, such as ovaries, ear plugs and stomachs.

For example, while the population age structure and reproductive rates of land mammals can be determined by observation over a period of time, such is not the case for whales because they spend most of their time underwater. In this case, we need ear plugs for age determination and ovaries to establish reproductive rates. Similarly, to study the interactions of whales and other parts of the marine ecosystem we need to know what, how much, where and when they are eating. This is done by examining stomach contents. DNA analysis only reveals what they have eaten, at most, not when, where and how much. Another example is that for pollution studies, tissue samples from various internal organs are required.

The expert panel that reviewed JARPN II in January 2009 said:

"The Panel recognises that at present, certain data, primarily stomach content data, are only available via lethal sampling."

Lethal studies are a standard research approach for other species and there is no scientific reason to exempt whales from this standard approach.

12. It is not possible to kill whales humanely.

Response: In fact, a large proportion of the whales taken are killed instantly by an explosive harpoon and for those cases when they are not, a secondary killing method (a second harpoon or high caliber rifle) ensures that the time to death is as rapid as possible. These two methods were introduced to ensure the most efficient and humane killing. The IWC has said that the explosive harpoon is the most effective method for killing whales and significant improvements to the humaneness of the hunt have been made.

It is not appropriate to compare the data of whaling with that of a slaughterhouse where killing is conducted in a controlled factory-like manner. Comparison with wildlife hunting such as deer and kangaroo is more appropriate. Instantaneous death and time to death of less than two minutes for whales is far better than the killing of most other wildlife.

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13. Japan is whaling in the “IWC Antarctic Sanctuary” and in waters claimed by Australia and designated as a sanctuary under Australian domestic law.

Response: The IWC sanctuary in the Antarctic applies to commercial whaling only. It does not apply to research whaling conducted under Article VIII of the ICRW⁷. In regards to Australia’s designated sanctuary, many countries including the U.S. and Japan do not recognize Australia’s Antarctic claim. The Antarctic Treaty, to which Australia is a member, freezes all Antarctic claims. From the perspective of the international community therefore, Australia’s claim and its sanctuary in Antarctic waters, which it has declared under its domestic legislation, has no legal standing in international law and therefore no effect.

14. Japan must respond to the political pressure from its major trading partners and otherwise friendly countries.

Response: Japan has received political representations from a number of countries urging a change in its whaling policy. The difference of views on the whaling issue has not affected and should not affect the overall good relationship Japan has with these countries. However, the fact that we have a difference of view does not mean that Japan should change its position. Japan is not insisting that Australians or Americans eat whale meat, but these countries do not have the right to impose their ethical or moral values on Japanese as long as whales are sustainably utilized. Japan’s position in the IWC is fully consistent with international law and science. Mutual respect for differences, not political coercion, is the solution to this difficult issue.

⁷ Article VIII of the ICRW begins with the words “Notwithstanding anything contained in the Convention.....”