

CONSIDERATION OF PROPOSALS FOR AMENDMENT OF APPENDICES I AND II

A. Proposal

Proposal to transfer Bryde's Whales, *Balaenoptera edeni* western North Pacific Stock from Appendix I to Appendix II with an annotation and export quota to meet the precautionary measures of Annex 4 of Resolution Conf. 9.24.

NOTES:

1. This proposal incorporates specific provisions to address the comments and concerns expressed by the CITES Secretary General, IUCN and TRAFFIC related to whale downlisting proposals at COP 11.
2. This proposal incorporates restrictions on potential trade and other measures to ensure "Precautionary measures" (Annex 4) of CITES Resolution Conf. 9.24 are fully met.
3. Present scientific knowledge shows that the North Pacific Stock of Bryde's whales is abundant and indeed not threatened with extinction. For this reason, listing on Appendix I is not consistent with the fundamental principles of Article II of the Convention.

This proposal, in accordance with the provisions of Article XV (l) of the Convention and Annex 6 of Resolution Conf. 9.24, proposes the transfer of the western North Pacific stock of Bryde's whale, *Balaenoptera edeni*, from Appendix I to Appendix II of the Convention with the following annotation: For the exclusive purpose to allow trade between Parties that are also signatories to the International Convention for the Regulation of Whaling and which have an effective DNA register system to monitor catches, introductions from the sea and imports from other States. To ensure that trade does not result in removals in excess of catch limits, the following additional measures shall be implemented:

- a) Notwithstanding the provisions of CITES Article XIV, paragraphs 4 and 5, any trade shall be subject to the provisions of Article IV.
- b) Calculation of a safe level of catch using the IWC's Revised Management Procedure (RMP).¹
- c) Establishment of an export quota that shall ensure that trade does not result in removals in excess of catch limits.²
- d) Indication on the trade documents of the number of animals involved when shipment of products are only parts of animals, and tracking of this number through DNA monitoring of imports.
- e) Implementation of domestic legislation to ensure imports are from animals taken legally.³

¹ See section 4.2.3 for description of RMP.

² Calculation of a flexible export quota would be determined by subtracting catches whose products are used domestically from the catch limit set in 1 above. The export quota would then be adjusted in this manner throughout the year. This will ensure that international trade between States does not result in removals in excess of catch limits. Although it may seem irregular to set an export quota in numbers of animals when shipments of products are only parts of animals in fact, with DNA monitoring of imports it is easy to track the number of animals that have been shipped.

- f) DNA registers to monitor catches, introductions from the sea and imports and a requirement that all imports be accompanied by certified DNA profiles.⁴

(Note: the footnotes are provided for information. They are not intended as part of the annotation.)

B. Proponent

Japan.

Summary

These measures are proposed in order to meet the precautionary measures in Annex 4 (section B 2.b and d) to Resolution Conf. 9.24 and to address concerns raised by the CITES Secretariat, IUCN and Traffic with respect to whale downlisting proposals at COP 11 by ensuring that adoption of this proposal will not result in any threat to conservation of the stock or lead to unregulated whaling or illegal trade in whale products.

Also in accordance with Annex 4 to Resolution Conf. 9.24, Japan will remove its reservation on the listing of this stock within 90 days of the adoption of this proposal.

In accordance with 1 above, if this proposal is accepted by the COP, the Government of Japan will waive its rights under Article XIV.4 of the Convention. (This Article relieves a State party to CITES of its obligations under the present Convention for marine species included in Appendix II taken in accordance with the provisions of another treaty if the party is also party to such treaty and if the treaty was in force at the time CITES came into force.) This means that CITES permits would be issued in accordance with the requirements of Article IV of the Convention.

Although Annex 3 of Resolution Conf. 9.24 says that “the listing of a species in more than one appendix (split-listing) should be avoided in general in view of the enforcement problems it creates”, the use of DNA registers means that such enforcement problems would not result from the transfer to Appendix II of the western north Pacific stock of Bryde’s whales while leaving other stocks of this species on Appendix I. Annex 3 of Resolution Conf. 9.24 also says that “when split-listing does occur, this should generally be on the basis of national or continental populations...” The proposed transfer of the western North Pacific stock, which is the stock definition according to the IWC, meets this recommendation.

The Government of Japan will consult with range states in accordance with the recommendations contained in Resolution Conf. 8.21 (recommendation a) and Resolution Conf. 9.24 Annex 6 section 6. Consultations will also be held with the CITES Secretariat, and representatives of IUCN and TRAFFIC.

Although the IWC currently imposes a moratorium for commercial harvest of whales, it should be noted that the IWC Scientific Committee has never provided scientific advice in support of this measure. Therefore, it is critically important for the CITES CoP to support this downlisting proposal in order to demonstrate that the CITES makes its decisions on the basis of scientific and objective information, not for political reasons.

³ Under Japan’s Decree of Import Trade Control, all imports from non-IWC member nations are prohibited. Importation from IWC member nations is not allowed unless the Japanese Government confirmed the authenticity of the certificate of origin by way of its diplomatic channels or other means.

⁴ Japan’s DNA register has already been established and will with the addition of some further analysis of samples from frozen stockpiles and some samples from whales taken in Japan’s whale research programs be “fully diagnostic” as recommended by the IWC Scientific Committee. A diagnostic register is one such that all animals registered are considered “permitted” and any others are defined as “not permitted”. As there are currently no known frozen stockpiles of Bryde’s whales, Japan’s DNA register system is “diagnostic” with respect to Bryde’s whales. Any illegal import of meat from Bryde’s whales would therefore be detected.

In 1979 the CoP adopted a Resolution (Res. Conf. 2.9) recommending the Parties not to issue any import or export permit for species or stocks protected from commercial whaling by the IWC. The application of Resolution Conf. 2.9 (now included in Resolution Conf. 11.4)) to proposals to transfer certain whale stocks from Appendix I to Appendix II at COP 10 and COP 11 has meant that the Parties have in fact imported into CITES the political difficulties and dysfunctional nature of the IWC. This proposal attempts to resolve this matter by proposing that the transfer to Appendix II be accompanied by an annotation such that International trade shall only take place among Parties that are also signatories to the International Convention for the Regulation of Whaling and which have an effective DNA register system and that the transfer be accompanied by a unique combination of conservation measures based on a safe catch quota calculated using the IWC's Revised Management Procedure, domestic legislation to ensure imports are from animals taken legally, a DNA register to monitor imports and, a flexible export quota to ensure that international trade does not result in removals in excess of catch limits. **This is a scientific rather than political means to address this issue.**

Brief history of the Bryde's whale in CITES

The Bryde's Whale, *Balaenoptera edeni*, was listed in CITES Appendix II at CoP 2 (San Jose, 1979). It was transferred to Appendix I at CoP 4 (Gaborone, 1983) and became effective in the same year.

In accordance with Article XXIII of the Convention, Japan entered a reservation with regard to this listing of the Bryde's whale on Appendix I.

C. Supporting statement

1. Taxonomy

- 1.1 Class: Mammalia
- 1.2 Order: Cetacea
- 1.3 Family: *Balaenopteridae*
- 1.4 Species: *Balaenopteridae edeni*
- 1.5 Scientific synonyms:
- 1.6 Common names:

English:	Bryde's whale, Tropical whale
French:	Rorqual tropical, Rorqual d'Eden
Spanish:	Ballena de Bryde
Italian:	Balenottera tropicale
German:	Bryde-wal
Japanese:	Nitari kujira
Russian:	Brayda kit
- 1.7 Code numbers: The code number of Bryde's whale, *Balaenoptera edeni*, in the CITES Identification Manual is Code A-111.007.001.003

2. Biological parameters

2.1 Distribution

The western North Pacific Stock of Bryde's whales is distributed in temperate and tropical zones in the western region of the North Pacific being the waters off the Pacific coasts of Japan, China (Province of Taiwan) and the Philippines to 180 degrees west. Northern limits approximately correspond to the southern margin of the sub-arctic boundary at about 40 degrees north and the

southern limits extends to about 2 degrees in the southern hemisphere. Distribution of this stock includes both international waters and the waters under national jurisdictions.

Range states are: Japan, China, Federated States of Micronesia, Indonesia, Papua New Guinea, Kiribati, Palau, Philippines, Nauru, Marshall Islands, Republic of Korea, Viet Nam, Russian Federation and the United States of America.

2.2 Habitat availability

As this stock is widely distributed in the western North Pacific, habitat availability is not regarded as a critical issue for this species.

2.3 Population status

Shimada and Miyashita (1995) presented population estimate of the western North Pacific Bryde's whales based on sighting surveys conducted in August and September from 1988 to 1994. During a total of 60,000 n. miles of searching effort 348 schools (512 animals) of primary sightings were seen. They estimated abundance to be 23,751 animals (CV= 0.20) using the program DISTANCE developed by Laake *et al.*, (1994). They assumed the probability of detection on the track line $g(0) = 1$, which results in a negative bias. Lack of searching effort in some parts of the stock distribution also led to negative bias (IWC, 1996).

In 1996 IWC/SC annual meeting Shimada and Miyashita (1996) presented new analyses incorporating new data from additional area between 0 degrees and 22 degrees 30 minutes covered by the 1995 survey and the resultant estimates of abundance of 25,640 (CV = 0.20). However, this estimate is also negatively biased because they still used $g(0) = 1$ and because no searching effort was made in some parts of the Philippines (IWC, 1996).

Okamura and Shimada (1999) estimated the abundance of the western north Pacific stock of Bryde's whales as 25,317 (CV = 0.184) taking the influence of many covariates into account. The methodology deals with line transect sampling data collected by several types of vessels under various environmental conditions over multiple years. Based on this work the IWC Scientific Committee has agreed on a population abundance estimate of 22, 136 (CV=0.186) for this stock.

2.4 Population trends

Since there has been no commercial hunting of Bryde's whales in the western North Pacific since 1987, the stock is almost certainly increasing. This has been confirmed by sighting surveys which show increasing density indices between 1994 and 2001. Density indices DIS: schools/100 n. miles and DIW: individuals/100 n. miles for Bryde's whales observed in Japan's research programs between 1994 and 2001 are as follows:

Year	DIS	DIW
1994	0.00	0.00
1995	0.01	0.02
1996	0.20	0.23
1997	0.01	0.01
1998	0.00	0.00
1999	0.19	0.23
2000	1.33	1.76
2001	0.40	0.52

2.5 Geographic trends

The IWC Scientific Committee currently considers two alternative stock hypotheses however, there is no strong evidence that the western North Pacific stock is further divided into additional stocks. The area of distribution appears stable.

2.6 Role of the species in its ecosystem

Marine mammal interactions with fisheries have become a major issue worldwide. It is an important issue in the context of world food security since the estimates are that cetaceans consume 3 to 5 times the amount of marine resources harvested for human consumption (Tamura and Ohsumi, 2000). Many international fisheries organizations have urged the development of multi-species or ecosystem management systems. Most significantly, at its 24th Session in 2001, COFI (FAO's Committee on Fisheries) unanimously agreed that the FAO should conduct studies on the interaction between fisheries and marine mammals. This agreement was endorsed by the 120th Session of the FAO Council and reaffirmed in the October 2001 Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem. Competition between top predators and fisheries has also been discussed at IWC meetings since at least the 51st meeting in 1999, when the estimated prey consumption by cetaceans worldwide was reported as 300 to 500 million metric tons (Tamura and Ohsumi, 1999). At its 53rd meeting in 2001, the IWC unanimously decided to make the study of interactions between whales and fish stocks a matter of priority.

Prey species of Bryde's whales are known to vary geographically and temporally. In the western north Pacific they are known to feed on krill, Japanese anchovy and juvenile chub mackerel. Estimates of annual prey consumption by Bryde's whales in this area are from 3.5 to 7.2 million tons per year. (Tamura IWC SC/52/E6). In the former whaling grounds of the pelagic North Pacific, euphausiids were the dominant prey species taken, with fishes and copepods also present (Ohsumi, 1977). Fish species included *Vinciguerria nimbaria*, *Maurollicus muelleri* and *Sardinops japonica*, euphausiids (krill) included *Nematoscelisdifficilis*, *Thysanoessa gregaria* and *Euphausia gibboides*; and copepods were of *Calanus* sp.

In the western north Pacific there are many species of whales. The populations abundance of all of them is increasing.

2.7 Threats

There are at the present no threats to Bryde's whales in North Pacific. The population is abundant. There is no evidence to suggest that environmental contaminants are impacting this stock.

3. Utilization and trade

3.1 National utilization

From 1946 until 1987, a total of 16,866 western North Pacific Bryde's whales were taken by Philippines (96), China (Province of Taiwan) (1,468), Japan coastal (7,154), Japan pelagic (4,037) and USSR pelagic (4,111). The number hunted in 1974, 1975 and 1976 averaged 1,400. There has been no commercial hunting of Bryde's whales in the western North Pacific since 1987. Japan has taken a total of 93 Bryde's whales in 2000 and 2001 as part of its whale research program in the western North Pacific. These takes were authorized by special permit as provided for under Article VIII of the International Convention for the Regulation of Whaling.

3.2 Legal international trade

At present, except for introductions from the sea resulting from catches that are part of Japan's research program, there is no international trade in Bryde's whale products. In the case of resumed

international trade in whale products under the terms of this proposal, trade would be limited to Parties that are also signatory to the ICRW and that have an effective DNA register. Any future international trade would also be limited by a unique combination of measures included in the annotation to the transfer to Appendix II which will ensure that imports and exports are from animals taken legally and that international trade does not result in unregulated whaling or removals in excess of catch limits.

Conservation of whale stocks is primarily a function of controlling removals from the stock and protecting habitat (see section 2.2 above). Removals from the stock include natural mortality, directed takes and deaths from other anthropogenic causes such as by-catches in fisheries and ship strikes. Trade is not of itself a conservation issue but is a part of the overall picture because it results from directed takes. For this reason, to be an effective conservation tool, regulation of trade must be part of a comprehensive set of conservation measures.

3.3 Illegal international trade

There has been no report of illegal trade in products of Bryde's whales. Pursuant to Resolution Conf. 9.12, the CITES Secretariat will be kept continuously updated with regard to any reported cases. Japan's import regulations and DNA register system will ensure no whale products derived from hunting contrary to IWC rules or hunting by non-IWC member countries will be permitted.

3.4 Actual or potential trade impacts

Bryde's whale stocks will not be threatened by trade because:

- a) Precautionary measures specified in Annex 4 of Resolution Conf. 9.24 are fully met by the annotation to accompany the transfer to Appendix II;
- b) The Revised Management Procedure completed by the Scientific Committee of the IWC will be used for the calculation of a safe catch quota and as the basis for calculation of a flexible export quota. This will ensure catches and international trade will pose no threat to the stock;
- c) Measures specified in the annotation to accompany the transfer will ensure that the transfer does not stimulate illegal whaling or illegal trade in whale products.

3.5 Captive breeding for commercial purposes (outside country of origin)

There has been no attempt to breed this whale species in captivity. Although certain species of whales have been held in captivity in several parts of the world for short periods, this is not thought to be feasible from a practical point of view or even useful for conservation purposes.

4. Conservation and Management

4.1 Legal status

4.1.1 National

Bryde's whales are currently protected under Japan's laws and the laws of range states.

4.1.2 International

Presently, the International Whaling Commission (IWC) is the international body responsible for management of Bryde's whale stocks. The objective of the 1946 International Convention for the Regulation of Whaling which established the IWC is "to provide for the

proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.”

In 1982, the IWC adopted a moratorium on commercial whaling which became effective in 1986. Since 1994, the IWC has been working to complete a revised management scheme which would include *inter alia*, a conservative method of calculating catch quotas (RMP) as well as an observation and inspection scheme. This scheme which could replace the moratorium remains the subject of political debate within the IWC because of its polarized and dysfunctional nature with some members opposed to the resumption of commercial whaling irrespective of the status of stocks and others favouring a resumption of whaling on a sustainable basis.

It is this problem that the Secretary General of CITES was referring to when he said he did not want the political problems of the IWC imported into CITES (see CITES Secretariat’s COP 11 Provisional Assessments p.4) “...The Secretariat is concerned that the difficult political discussion that has divided that body for so many years now is “exported” to the CITES conference of the Parties with the risk of causing similar negative effects on the relationship between the Parties.” (see also July 4, 2000 letter from CITES Secretary General to the Chairman of the IWC which basically repeats this expression of concern.) Adoption of this proposal to transfer the western North Pacific stock of Bryde’s whales to Appendix II with conservation measures in the annotation including an export quota calculated using the IWC’s RMP would mean that CITES was acting on the basis of scientific advice to ensure no threat to the stock while avoiding the political problems of the IWC. (See also last paragraph of Section A Proposal.)

Other international resource management conventions support the principle of sustainable use. Note for example the preambular paragraph of the Convention on Biological Diversity which says “ *Noting* that, ultimately, the conservation **and sustainable use** (emphasis added) of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,”.

A proposal to transfer the north Pacific stocks of Bryde’s whales from Appendix I to Appendix II was not accepted at COP 10 (Harare, 1997). A similar proposal at COP 11 (Gigiri, 2000) was withdrawn.

4.2 Species management

See 4.1.2. above.

4.2.1 Population monitoring

The western north Pacific stock is being regularly surveyed as part of Japan’s whale research program.

4.2.2 Habitat conservation

As this stock is widely distributed in the western North Pacific, habitat conservation is not regarded as a critical issue for this species.

4.2.3 Management measures

IWC’s Revised Management Procedure is a risk averse method of calculating catch quotas. Quotas are only provided for abundant stocks. No quotas are provided for stocks that are below 54% of their initial population size. The objective is that in 100 years after exploitation based on RMP the population will still be around 72% of the initial population

size. Population estimates used for RMP calculations are based only on those animals seen - they are therefore minimum or under-estimates. RMP includes built in safety factors including possible impacts of environmental changes, possible error in abundance estimates of up to 50% and unequal sex ratios in catches. RMP calculations are based on thousands of simulation trials over a period of 100 years. RMP is a feedback system requiring new abundance surveys every 5 years. Most commercial fisheries would be closed if such a conservative regime were used - in fact, RMP wastes whale resources because it is too conservative. The Revised Management Procedure constitutes the most advanced and robust management mechanism ever developed for any wild species.

4.3 Control measures

See 4.1.1 and 4.1.2 above.

4.3.1 International trade

See 3.2 above.

4.3.2 Domestic measures

Hunting

The harvest would be regulated through quotas set by using the IWC's Revised Management Procedure. The quotas would be allocated to vessels. All vessels would have national inspectors (appointed by the Government of Japan to enforce regulations) on board throughout the catching season except in cases when vessel size is insufficient to accommodate and inspector on board. In such cases, an inspector or vessel monitoring system (VMS) would be used at landing sites.

Trade/Commerce

Japan, as the only significant potential market for whale meat imports has domestic regulations that prohibit imports of whale products from non-IWC member countries, a DNA register system and market monitoring scheme and strict customs controls. As there are currently no known frozen stockpiles of Bryde's whales, Japan's DNA register system is "diagnostic" with respect to Bryde's whales. Any illegal import of meat from Bryde's whales would therefore be detected.

5. Information on Similar Species

Hunting

Currently, the only commercial hunting of whales occurs within the Norwegian EEZ. The hunt is limited to minke whales and by a quota established using the IWC's RMP with an adjusted tuning level. Other species of large whales are hunted in the United States, Russian Federation, Greenland and St. Vincent and the Grenadines for aboriginal/subsistence purposes under IWC quota. This includes gray whales, humpback whales, bowhead and minke whales. Products derived from aboriginal/subsistence hunting are for local consumption only. Products from whaling by non-IWC member countries including Canada and the Philippines do not enter into international trade. Minke whales are taken by Japan in the Antarctic and in the north Pacific along with Bryde's and sperm whales as part of its whale research programs authorized by the Government under the terms of Article VIII of the International Convention for the Regulation of Whaling. Catches in these research programs are small in relation to population abundance and have no impact on the species (Antarctic 440 minke: North Pacific 100 minke, 50 Bryde's and 10 sperm).

Trade/commerce

There is currently no international trade in whale products except for introductions from the sea from Japan's whale research programs in the Antarctic and the Western North Pacific. Article VIII of the International Convention for the Regulation of Whaling requires that the by-products of the research be utilized to the extent possible.

6. Other Comments

The proposal was sent to range states for comment however, comments were only received from the United States of America. The United States of America is opposed to the proposal.

7. Additional Remarks

Present knowledge shows that the western North Pacific stock of Bryde's whales is not threatened with extinction and for that reason, its listing on Appendix I is inconsistent with the fundamental principles of Article II of the Convention. In addition, since this stock is abundant, widely distributed and shows no current declining trend, this stock does not meet any of the biological criteria specified in Annex I of Resolution Conf. 9.24 for listing in Appendix I.

The proposed annotation to accompany the transfer to Appendix II will ensure that international trade does not pose a threat to the stock and that it will not illicit illegal hunting or trade. These measures together with Japan's commitment to remove its reservation on the listing of this stock in CITES appendices fully satisfies the precautionary measures specified in Annex 4 of Resolution Conf. 9.24.

While in 1983, there might have been reasons to believe that the listing of the Bryde's whale on Appendix I was warranted, scientific information now available strongly proves otherwise.

With the adoption of Resolution Conf. 11.4 (which was a consolidation of previous resolutions related to whales), CITES Parties carried forward their earlier recommendation that Parties agree not to issue any import or export permit, or certificate for introduction from the sea, for primarily commercial purposes for any specimen of a species or stock protected from commercial whaling by the ICRW. However, the IWC has been at a political impasse (as described above in section 4.1.2) since the adoption of the moratorium on commercial whaling in 1982. This means in effect that the anti-whaling majority of approximately 20 IWC members is holding to ransom the work of over 150 countries that are Parties to CITES. Parties to CITES constitute an independent organization. Consistent with the express wishes of the CITES Secretary General, the Government of Japan urges that the political difficulties that prevent the IWC from carrying out its mandate not be imported into CITES. This means that the above recommendation contained in Resolution Conf. 11.4 should be set aside and that decisions within CITES on matters concerning the listing of species on its Appendices should be made on the basis of the best scientific advice available.

8. References

Report of the Scientific Committee IWC/48/4, June 1996.

Report of the Sub-Committee on North Pacific Bryde's whales, Annex G, Rep. Int. Whal. Commn 46, 1996.

Ohsumi, S. 1977a. Bryde's whales in the pelagic whaling ground of North Pacific, *Rep. Int. Whal. Commn* (special issue 1):140-50.

Kato, H. and Yoshioka, M. 1993. Biological parameters and their areal and temporal variations of Bryde's whalers in the North Pacific, with respect to stock identification. SC/45/08, 18pp.