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## Introduction

In the field of fisheries, it is commonly understood that (i) illegal catches adversely affect the sustainable utilization of fishery resources and put pressure on fishery operators, necessitating measures to prevent the distribution of illegally caught fish, including their exportation, and to ensure proper domestic distribution, and that (ii) international cooperation is necessary for the elimination of Illegal, Unreported and Unregulated (“IUU”) fishery operations, especially with concern to highly vulnerable species. Accordingly, Japan must take measures to prevent the inflow of IUU catches from within its waters and abroad.

Against this background, the Act on Ensuring the Proper Domestic Distribution and Importation of Specified Aquatic Animals and Plants, etc., (hereinafter referred to as the "Proper Distribution Act") was promulgated on December 11, 2020, to regulate specified aquatic animals and plants caught in or imported to Japan, including (a) notification by fishers, etc., (b) communication of the catch number, etc., for each catch, (c) preparation and preservation of transaction records, and (d) certification of legality upon export and import. The Proper Distribution Act came into force from December 1, 2022.

### 1. Regulated aquatic animals and plants

With respect to fish, seaweed, and other aquatic animals and plants (collectively, “Resources”), the Fishery Act and the Proper Distribution Act stipulate three groups: “Specified” Resources, “Class I” Resources, and “Class II” Resources. Specified Resources<sup>1</sup> are broadly stipulated under the revised Fishery Act and the Basic Policy on Resource Control thereunder and managed through a new Total Allowable Catch (“TAC”) system.

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<sup>1</sup> Fishery resources controlled based on the total allowable catch; Fishery Act Article 11, para.2, item 3.

**TABLE 1:** Aquatic Animal and Plants Designations and Regulation Methods

GROUP	DEFINITIONS	FISH SPECIES	REGULATION METHOD
Specified Aquatic Animals and Plants	Resources likely to be <u>gathered or caught for the purpose of acquiring unlawful economic benefit</u> and which are specified by Order of the Ministry of Agriculture, Forestry and Fisheries (“MAFF”) as those likely to have <u>serious impacts on the growth of the aquatic animals and plants or on the production activities of fisheries</u> when they are gathered or caught for that purpose; (Fishery Act Art. 132, para. 1)	Young eel, <sup>2</sup> Abalone, and Sea cucumber (Art. 41 of the Enforcement Order of the Fishery Act)	① Prohibition of gathering and catching (Fishery Act, Art. 132, para. 1 and Art. 189, sub-para. 1) ② Prohibition of the transport, retaining, acquisition, and mediation of disposal of illegally gathered or caught resources and derived products (Art. 189, sub-para. 2 of the Fishery Act)
Class I Aquatic Animals and Plants	Resources recognized to be under significant risk of <u>illegal and excessive catching or gathering in Japan</u> (excluding catching or gathering by foreign fishing vessels, meaning non-Japanese-flagged vessels with fishing equipment or otherwise used for fishing purposes), and stipulated by MAFF order as particularly in <u>need of conservation and management</u> (Proper Distribution Act Art. 2, para. 1)	Young eel, <sup>3</sup> Abalone, Sea cucumber, (Art. 1 of the Enforcement Order of the Proper Distribution Act)	① Notification by fishery operators, etc. ② Communication of information among operators ③ Preparation and preservation of transaction records ④ Export control
Class II Aquatic Animals and Plants	Resources imported into Japan or stipulated by MAFF order as in need of due to being recognized as <u>illegally caught or gathered with significant risk by foreign fishing vessels under foreign laws</u> or for which <u>international conservation and management measures</u> are necessary (Proper Distribution Act Art. 2, para. 4)	Mackerel, Saury, Sardines, and Squid (Art. 3 of the Enforcement Order of the Proper Distribution Act)	① Prohibition of import of aquatic animals and plants without certification of legal catch and gathering

Currently, Specified and Class I Resources include the same types (save for that the grace periods for young eels are different). However, the Fishery Act regulates the "act of gathering, catching and distributing" target fish species and the Proper Distribution Act regulates the "operator" that gathers and distributes the target fish species, mainly in domestic fisheries. In addition to Japanese regulations, it also is important to pay attention to conservation and control measures for aquatic animals and plants, such as the regulations of the

<sup>2</sup> A three-year grace period has been set for young eels (Article 2 of the Supplementary Provisions of the Enforcement Order of the Fishery Act) from the date of enforcement of the Fishery Act (December 1, 2020).

<sup>3</sup> Young eels were included in Class I Resources from December 2025 (Article 1 of the Supplementary Provisions of the Ordinance for Enforcement of the Act for Proper Distribution of Fishery Products).

countries where they are exported and imported, and the Western and Central Pacific Fisheries Commission (WCPFC).

## **2. Domestic distribution related measures**

### **(1) Business Operator Notification Requirements for Class I Aquatic Animals and Plants**

A person who (a) gathers or catches Class I Resources and (b) carries out the business of transferring (i) those Resources or (ii) processed products based thereon (or the organization to which such person belongs if such organization carries out the business of transferring), shall be obliged to notify in advance the governmental authority of the information, etc., concerning such person's authority to gather or catch such Class I Resources.<sup>4</sup>

In addition, a business operator handling Class I Resources (meaning a person, entity or organization that is engaged in the business of selling, exporting, processing, manufacturing or providing any of the Class I Resources<sup>5</sup>) also shall be obliged to notify MAFF within two weeks of the commencement of such business.<sup>6</sup> Provided that, in the case of the proviso of Article 8, para. 1 of the Proper Distribution Act, the obligation to notify shall be exempted.<sup>7</sup>

### **(2) Obligation to Transmit Information by Notifying Catcher or Gatherer and Business Operator Handling Class I Aquatic Animals and Plants**

In the event of the transfer of Class I Resources from a notifying catcher or gatherer to a business operator handling Class I Resources and in the event of the transfer or delivery between business operators handling Class I Resources, they shall communicate the fish catch number, the name of the business operator, the weight and quantity, and the date of the transfer or delivery by means of its packaging, container, indication on an invoice, electronic data processing (recording in an electronic file, a CD Rom, etc.).<sup>8</sup>

### **(3) Obligation of Business Operator Handling Class I Aquatic Animals and Plants, etc., to Prepare and Preserve Transaction Records**

In the event of transfer, acceptance, delivery, and acceptance, destruction, or loss of Class I Resources between business operators handling Class I Resources, such business operators shall be obliged to prepare and maintain records of the names, weight, quantity, date, counterparty, catch number, etc., in

<sup>4</sup> It should be noted that the regulations of the Act on Proper Distribution of Fishery Products are applicable to Class I specified aquatic animals and plants and to certain Class I aquatic animals and plants (including processed products); Proper Distribution Act Article 3, para. 1, Article 5 of the Enforcement Ordinance of the Proper Distribution Act.

<sup>5</sup> Proper Distribution Act, Article 2, para. 3.

<sup>6</sup> Proper Distribution Act, Article 8, para.1 and Article 22 of the Enforcement Ordinance of the Proper Distribution Act.

<sup>7</sup> Article 22, para. 4, sub-para. 2 of the Enforcement Ordinance of the Proper Distribution Act provides for an exemption regarding "when a business operator handling Class I specified aquatic animals and plants, etc., engages exclusively in the business of selling or offering the Class I specified aquatic animals and plants, etc., to persons other than a business operator handling Class I specified aquatic animals and plants, etc." It seems that the exemption from the obligation to notify in the case of selling Class I Resources exclusively to consumers and operators of restaurants and accommodations as provided in the Domestic Q&A (p. 15) shall be based on this provision.

<sup>8</sup> Proper Distribution Act, Articles 4 5and Articles 11 to 14 of the Enforcement Oder thereof.

writing or by electromagnetic records for a period of three years.<sup>9</sup> However, exemptions are granted in the event of a small amount of waste or loss, or in the event of leftovers from sales or provision to general consumers.

**(4) Attachment of Legal Harvest Certificate pertaining to Export of Class I Aquatic Animals and Plants, etc.**

Business operators handling Class I Resources shall apply to the governmental authority for a legal harvest certificate (certifying (a) that their harvests have not been gathered or caught in violation of the laws and regulations related to the Fishery Act or (b) that Resources constituting such harvest are not imported or farmed aquatic animals and plants, etc.) and attach the same when it exports Class I Resources.<sup>10</sup> In addition, the legal harvest certificate under the Proper Distribution Act is approved only for Class I Resources. If proof of proper fishing is required under the import regulations of the country to which other aquatic animals and plants, etc., are exported, it is necessary to pay attention to the measures in accordance with the applicable laws of such country.

**(5) Questions and Answers concerning the "Act on Ensuring the Proper Domestic Distribution and Importation of Specified Aquatic Animals and Plants, etc." (hereinafter referred to as "Domestic Distribution Q&A")**

- (a) A retailer who sells Class I Resources solely to consumers is not required to submit a notification. Furthermore, when a retailer sells Class I Resources to a consumer, the obligation to communicate information and the obligation to prepare and preserve transaction records are exempted. However, in the event that a retailer receives Class I Resources from another business operator handling Class I Resources, it is necessary to prepare and preserve transaction records.
- (b) Restaurants and accommodations fall under the category of business operators handling Class I Resources, but the obligation to notify and the obligation to communicate information are exempted. Similar to retailers, the obligation to communicate information and the obligation to prepare and preserve transaction records will be exempted in the event of the sale of Class I Resources, but in the event of the transfer of such resources from another business operator handling Class I Resources, it is necessary to prepare and preserve transaction records.

How to make the regulations known to small businesses and downstream businesses in the value chain, and how to make them prepare the compliance system therefor, is likely to be an issue for the future.

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<sup>9</sup> Proper Distribution Act, Article 6 and Articles 18 to 21 of the Enforcement Order thereof.

<sup>10</sup> Proper Distribution Act, Article 10 and Article 24 of the Enforcement Order thereof.

### 3. Import-related measures

#### (1) Regulations Concerning Class II Aquatic Animals and Plants, etc.

When importing Class II Resources (meaning Class II Aquatic Animals and Plants and manufactured or processed products using such resources as raw materials that are specified by MAFF Public Notice),<sup>11</sup> the attachment of a certificate of legal gathering or catch by a foreign government agency or other documents provided by the Enforcement Order of the Proper Distribution Act (for example, in the case of farmed fish, a document certifying such fact) is required.<sup>12</sup>

This regulation applies to importers, and even in the event of subsequent sales or provision, there is no obligation to present legal supplementary certificates or to prepare and store records.

#### (2) Country, Region and Organization to Issue a Certificate of Legal Gathering or Catch, etc.

For countries where a certificate of legal gathering and catch can be obtained, etc., they are updated from time to time on the website of the Fisheries Agency (<https://www.jfa.maff.go.jp/j/kakou/tekiseika.html>).

### 4. Sanctions against Violations

#### (1) Effort Obligation to Report

A business operator handling Class I Resources shall make effort to promptly notify MAFF of any suspected illegal gathering or catch of such resources from another business operator handling the same.<sup>13</sup> However, there is a special feature of this requirement in that the obligation is “to make efforts” and that the report is limited to the cases of Class I Resources transferred to the reporting business operator handling the same (in the event that there is a suspicion of illegal gathering or catch of Class I Resources that have been traded between other business operators handling the same, the obligation to make efforts for reporting shall not apply, but it will be construed that voluntary reporting shall not be prevented).

#### (2) Recommendations and Orders Concerning Class I Aquatic Animals and Plants, etc.

The Director General of the Regional Agricultural Administration Office may (a) recommend that necessary measures should be taken in cases where a notifying catcher or gatherer does not comply with the obligation to transmit information or where a business operator handling Class I Resources does not comply with the obligation to transmit information or to prepare and preserve transaction records,<sup>14</sup>

<sup>11</sup> Proper Distribution Act, Article 2, para.5, Article 4 of the Enforcement Order thereof, Public Notice No. 940 of the Ministry of Agriculture, Forestry and Fisheries.

<sup>12</sup> Specifically, it can be confirmed in the export statistics list, but it also includes frozen, heated, and dried products, as well as part cut pieces such as cherry, filet, etc. <https://www.kanzei.or.jp/statistical/expstatis/headline/hs1dig/j/1>; Proper Distribution Act, Articles 11 and 25, paras.1 and 4 of the Enforcement Order thereof.

<sup>13</sup> Proper Distribution Act, Article 9.

<sup>14</sup> Proper Distribution Act, Article 7, para.1 and para.2 and Article 26, para.1 and para.2 of the Enforcement Order thereof.

and (b) in cases where the business operator fails to take measures pertaining to the recommendation without justifiable grounds, order such measures to be taken.<sup>15</sup>

### **(3) On-site Inspections**

The Director General of the Regional Agricultural Administration Office is authorized in the following to the extent necessary for the enforcement of the Proper Distribution Act:<sup>16</sup>

- (a) Requesting importers of Class I Resources and Class II Resources and other related business operators to submit necessary reports, books, documents and other materials; and
- (b) Entering the factories, stores, offices, places of business, ships, vehicles, warehouses, etc., of the business operator as mentioned in (a) above and inspecting the status of the businesses operations, aquatic animals and plants, etc., books, documents and other materials, and inquiring the employees and other persons concerned.


### **(4) Penal Provisions**

Penal provisions for violation of the obligation to notify, violation of the order to take measures, violation of export restrictions, refusal or obstruction etc., of on-site inspections will apply to a notifying catcher or gatherer and a business operator handling Class I Resources.<sup>17</sup>

Importers of Class II Resources also are subject to penal provisions with respect to violation of the obligation to attach a certificate of legal gathering and catch, etc., refusal or obstruction, etc., of on-site inspections.<sup>18</sup> In both cases, dual criminal penalty provisions will apply.<sup>19</sup>

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<sup>15</sup> Proper Distribution Act, Article 7, para.3 and Article 26, para.3 of the Enforcement Order thereof

<sup>16</sup> Proper Distribution Act, Articles 12 and 13 and Article 26, sub-para.4 and 5 of the Enforcement Order thereof.

<sup>17</sup> Proper Distribution Act, Article 16, subparas.1 through 5 and Article 17.

<sup>18</sup> Proper Distribution Act, Articles 15 and 16, sub-para. 5.

<sup>19</sup> Proper Distribution Act, Article 18.