

Draft Resolution for IWC 65

Whaling under Special Permit

Submitted by New Zealand

Noting the judgment of March 31, 2014 of the International Court of Justice in the case concerning Whaling in the Antarctic (Australia v. Japan: New Zealand intervening);

Recalling that the Court established several parameters for a programme for purposes of scientific research pursuant to Article VIII of the Convention that are relevant to the Commission's consideration of special permit programmes;

Noting the Court's finding that the text of Article VIII contains two cumulative elements – 'scientific research' and 'for purposes of' – each of which must be satisfied [paragraphs 70-71 of judgment];

Taking into account the Court's finding that the use of lethal methods will only be for purposes of scientific research where the elements of the programme's design and implementation are reasonable in relation to achieving its stated objectives [paragraphs 67, 88 of judgment], and that it is for the authorising State to explain the objective basis for its determination that the use of lethal methods is for purposes of scientific research [paragraph 68 of judgment];

Noting the Court's finding that the use of lethal sampling pursuant to Article VIII must not be on a larger scale than is reasonable in relation to achieving the programme's stated research objectives [paragraphs 94, 97 of judgment];

Noting also the Court's view that a proposal for a programme of lethal research should include analysis of the feasibility of non-lethal methods, including as a means of assessing whether the programme uses lethal methods on a larger scale than is reasonable in relation to achieving its stated objectives [paragraphs 142-144 of judgment];

Taking into account the Court's expectation that, in the evaluation of the possibility of granting any future permits under Article VIII paragraph 1, account will be taken of the reasoning and conclusions contained in the judgment [paragraph 246 of judgment];

Recognising that the Court's findings and reasoning should inform the interpretation and application of special permits for the taking of whales for purposes of scientific research by parties to the Convention;

Affirming that, while it is not the role of the Commission to decide upon the legality of special permit programmes, it is appropriate for the Commission to review and make recommendations on the appropriateness, scientific merit and importance of such programmes,

Now, therefore, the Commission:

1. **Instructs** the Scientific Committee, in its reviews of new and existing Special Permit research programmes, to provide advice to the Commission on whether:
 - (a) the design and implementation of the programme, including sample sizes, are reasonable in relation to achieving the programme's stated research objectives;
 - (b) the elements of the research that rely on lethally obtained data are likely to lead to improvements in the conservation and management of whales;

- (c) the objectives of the research could be achieved by non-lethal means or whether there are reasonably equivalent objectives that could be achieved non-lethally;
 - (d) the scale of lethal sampling is reasonable in relation to the programmes' stated research objectives, and non-lethal alternatives are not feasible to either replace or reduce the scale of lethal sampling proposed.
2. **Instructs** the Scientific Committee to consider its criteria for the review of Special Permit research programmes in the light of the above elements and, if necessary, to amend the criteria to incorporate those elements.
3. **Recommends** that no further special permits for the take of whales are issued under existing research programmes or any new programme of whale research until:
- (a) the Scientific Committee has received and reviewed research proposals that enable it to provide advice to the Commission in accordance with the instructions above; and
 - (b) the Commission has considered the report of the Scientific Committee and assessed whether the proponent of the special permit program has acted in accordance with the review process described above; and
 - (c) the Commission has, in accordance with Article VI, made such recommendations on the merits or otherwise of the special permit program as it sees fit.