

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 decision of the Court has no binding force except between the parties and in respect of the particular case [Article 59 of the Statute of the International Court of Justice];

**Recognising** however that, as a decision of the principal judicial organ of the United Nations, the decision is a highly authoritative guide on how Article VIII of the International Convention for the Regulation of Whaling should be interpreted and applied;

**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 would look to 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];

**Recalling** the Court's finding that the elements relevant to the consideration of whether a programme's design and implementation are reasonable in relation to achieving its stated scientific objectives may include: decisions regarding the use of lethal methods, the scale of the programme's use of lethal sampling, the methodology used to select sample sizes, a comparison of the target sample sizes and the actual take, the timeframe associated with a programme, the programme's scientific output, and the degree to which a programme coordinates its activities with related research projects [paragraph 88 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 137, 142 of judgment];

**Noting** also the Court's view that States parties to the Convention have a duty to co-operate with the IWC and the Scientific Committee and thus should give due regard to recommendations calling for an assessment of the feasibility of non-lethal alternatives [paragraph 83 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 decisions relating to the granting and evaluation of special permits for the taking of whales for purposes of scientific research by parties to the Convention;

**Affirming** that it is appropriate for the Scientific Committee to review and comment on proposed special permits as stipulated under paragraph 30 of the Schedule to the Convention, and for the Commission to receive and consider the reports and recommendations of the Scientific Committee and make such recommendations as it sees fit;

**Urging** Contracting Governments to respect fully the wish of the Commission to ensure the conservation of whales in sanctuaries designated by the Commission;

**Now, therefore, the Commission:**

1. **Instructs** the Scientific Committee, in its review of new and existing special permit research programmes, to provide advice to the Commission on:
  - (a) whether the design and implementation of the programme, including sample sizes, are reasonable in relation to achieving the programme's stated research objectives;
  - (b) whether 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) whether 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) whether the scale of lethal sampling is reasonable in relation to the programme's stated research objectives, and non-lethal alternatives are not feasible to either replace or reduce the scale of lethal sampling proposed; and
  - (e) such other matters as the Scientific Committee considers relevant to the programme, having regard to the decision of the International Court of Justice, including the methodology used to select sample sizes, a comparison of the target sample sizes and the actual take, the timeframe associated with a programme, the programme's scientific output; and the degree to which a programme coordinates its activities with related research projects.
2. **Instructs** the Scientific Committee to consider and revise how it reviews special permit research programmes, including in relation to the *Annex P: Process for the Review of Special Permit Proposals and Research Results from Existing and Completed Permits*, in light of the matters set out in paragraph 1 above, for consideration by the Commission.
3. **Requests** 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 reviewed the research programme to 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 programme 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 programme as it sees fit.