

Resolution on Improving the Review Process for Whaling under Special Permit

Submitted by Australia and 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);

Noting the Court's view that Contracting Governments to the International Convention for the Regulation of Whaling ("the Convention") have a duty to cooperate with the International Whaling Commission and Scientific Committee;

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

Underscoring the importance of the Commission considering these reports and recommendations of the Scientific Committee and, to that end, being able to make recommendations in sufficient time to allow the Contracting Government concerned to give such recommendations due regard, in exercise of its duty to cooperate, prior to issuing a special permit;

Acknowledging in this respect the Scientific Committee's advice to the Commission on new, ongoing and completed special permit programmes;

Recalling Resolution 2014-5, which *inter alia* instructed 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.

Gratefully acknowledging the constructive changes to the *Annex P: Process for the Review of Special Permit Proposals and Research Results from Existing and Completed Permits* (Annex P), adopted by the Scientific Committee at SC66a in 2015, and the efforts of the Scientific Committee and the Commission to improve other procedural matters;

Further recalling Resolution 2014-5, which *inter alia* 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 in Resolution 2014-5;
- b. The Commission has considered the report of the Scientific Committee and assessed whether the Contracting Government proposing or responsible for the special permit programme has acted in accordance with the review process described in Resolution 2014-5; and
- c. The Commission has, in accordance with Article VI of the Convention, made such recommendations on the merits or otherwise of the special permit programme as it sees fit.

Noting that the Government of Japan, notwithstanding Resolution 2014-5, issued special permits for its “New Scientific Whale Research Program in the Antarctic Ocean (NEWREP-A)” before: i) the Scientific Committee had provided advice to the Commission in accordance with the instructions in Resolution 2014-5; ii) the Commission had considered the report of the Scientific Committee and assessed whether Japan had acted in accordance with the review process described in Resolution 2014-5 and, in accordance with Article VI, made such recommendations on the merits or otherwise of the special permit programme as it saw fit.

Further recalling Resolution 2007-1, in which the Commission recalled that it had repeatedly requested Contracting Parties to refrain from issuing special permits for research involving the killing of whales within the Southern Ocean Sanctuary.

Now, therefore the Commission:

1. **Agrees** to establish a Standing Working Group (“the Working Group”), in accordance with Article III.4 of the Convention. The Working Group will be appointed by the Bureau on the basis of nominations from Contracting Governments, to consider the reports and recommendations of the Scientific Committee with respect to all new, ongoing and completed special permit programmes and report to the Commission, in accordance with the Terms of Reference contained in the Appendix to this resolution.
2. **Agrees** that the discussion of special permit programmes be afforded sufficient priority and time allocation to allow for adequate review at both Commission and Scientific Committee meetings;
3. In order to facilitate the Commission’s timely and meaningful consideration of new, ongoing and completed special permit programmes, **Requests** Contracting Governments to submit proposals for new special permit programmes, and review documentation for ongoing and completed special permit programmes, at least six months before the Scientific Committee meeting held in

the same year as a Commission meeting (see the indicative process set out in paragraph 9 of the Appendix);

4. In order to facilitate the Scientific Committee's review of new, ongoing and completed special permit programmes, **Requests** Contracting Governments to provide members of the Scientific Committee unrestricted and continuing access to all data collected under special permit programmes that are:
 - a. used in the development of new programmes; or
 - b. included in ongoing or final programme reviews.

Data made available in accordance with this request shall be used only for the purposes of evaluation and review of special permit programmes.

5. **Instructs** the Scientific Committee to inform the Commission as to whether Scientific Committee members had unrestricted and continuing access to data collected under special permit programmes, and analyses thereof;
6. **Further instructs** the Scientific Committee to provide its evaluation of proposals to the Commission in the same year as a Commission meeting (regardless of when the Scientific Committee's review commences), and to make necessary revisions to its procedures for reviewing special permit programmes, including Annex P, to incorporate the expectation that Contracting Governments will schedule any special permit programmes in accordance with the process outlined in paragraph 3;
7. **Agrees** that the Commission will consider the reports of the Scientific Committee and of the Working Group at the first Commission meeting after the Scientific Committee has reviewed the new, ongoing or completed special permit programme in question and, taking into account those reports, the Commission will:
 - a. form its own view regarding:
 - i. whether the review process has adequately followed the instructions set out in Annex P and any additional instructions provided by the Commission ;
 - ii. whether the elements of a proposed special permit programme, or the results reported from an ongoing or completed special permit programme, have been adequately demonstrated to meet the criteria set out in the relevant terms of reference in Annex P, and any additional criteria elaborated by the Commission; and
 - iii. any other relevant aspect of the new, ongoing or completed special permit programme and review in question;
 - b. provide any recommendations or advice it considers appropriate to the responsible Contracting Government regarding any aspect of the new, ongoing or completed special permit programme, including affirming or modifying any proposed recommendations or advice proposed by the Scientific Committee.
 - c. provide any direction it considers appropriate to the Scientific Committee.

- d. make public a summary of the Commission's conclusions in this respect, by way of publication on the Commission's website, within 7 days of the end of the Commission meeting.

Appendix: Terms of Reference for a Standing Working Group on Special Permit Programmes

Membership:

1. The Standing Working Group on Special Permit Programmes (“the Working Group”) will consist of Commissioners or other Contracting Government delegates, and represent the range of opinions on the issue of special permits. The Chair of the Scientific Committee will also participate in the Working Group.
2. The Contracting Government proposing or responsible for the special permit programme in question may participate in the Working Group as an observer only. As an observer, this Contracting Government may provide information to the Working Group at the Working Group’s request, to assist its work.
3. The Working Group will elect from its membership a Chair and Vice Chair. The Chair and Vice Chair will be responsible for ensuring that the business of the Working Group is carried out efficiently and in accordance with this resolution.

Methods

4. The Working Group will work by correspondence in the intersessional period, or, if convenient or cost-effective, in face to face meetings.
5. The Working Group will consider the reports and recommendations of the Scientific Committee with respect to all new, ongoing and completed special permit programmes, and provide a factual, accessible and succinct report at least 30 days in advance of the Commission meeting. The Working Group will present its report verbally to the Commission plenary. The Commission may draw on the report in its consideration of any relevant item of business submitted in accordance with Rule J1 or J2 of the Rules of Procedure.
6. The Working Group will begin by considering the Scientific Committee’s review of Japan’s Southern Ocean whaling programme, known as “New Scientific Whale Research Program in the Antarctic Ocean (NEWREP-A)”. The Working Group will also consider the Scientific Committee’s subsequent reviews of special permit programmes.
7. The Commission will consider the operation of the Working Group at its 67th meeting.

Reporting

8. For each new, ongoing and completed special programme considered by the Scientific Committee, the Working Group will produce the following:
 - a. A high-level summary of the outcomes and recommendations of each review of new, ongoing and completed special permit programmes conducted by the Scientific Committee, to aid the Commission’s understanding of the Scientific Committee’s advice;
 - b. Advice on whether each review process has complied with the procedures set out in Annex P, and any additional procedures provided by the Commission, whether in resolutions or otherwise;
 - c. A summary of the Scientific Committee’s view on whether the elements of a proposed special permit programme, or the results reported from an ongoing or completed

programme, have been adequately demonstrated to meet the criteria set out in the relevant terms of reference in Annex P, and any additional criteria elaborated by the Commission, whether in resolutions or otherwise;

- d. Recommendations to improve the communication of the outcomes of each review and the management of reviews, including time allocation, procedural management and data availability; and
- e. Any other relevant information or advice from the Scientific Committee arising from the new, ongoing or completed special permit programme and review in question.

Indicative process

9. An indicative process for the preparation of the Working Group's report within the biennial meeting cycle is as follows:

1. Potential submission of a special permit proposal and/or scheduled ongoing or final review
2. Expert Panel review
3. Scientific Committee (a) review in the year between Commission meetings
4. Working Group receives the report of the Scientific Committee (a)
5. Potential submission of a special permit proposal and/or scheduled ongoing or final review (if not already submitted under step 1), followed by Expert Panel review
6. Scientific Committee (b) review in the year of a Commission meeting
7. Working Group receives the report of the Scientific Committee (b)
8. Working Group prepares its report and provides it to the Commission at least thirty days in advance of the Commission meeting
9. Working Group presents its report at the Commission meeting