

Draft 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 have a duty to cooperate with the International Whaling Commission and Scientific Committee;

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;

Underscoring the importance of the Commission having a meaningful role in 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;

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 Scientific Committee's efforts to improve other procedural matters;

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, contrary to the request in Resolution 2014-5, issued special permits for its "New Research Programme in the Antarctic" 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.

Now, therefore the Commission:

1. **Agrees** to establish a small Working Group of the Commission, appointed by the [Bureau], to consider the reports and recommendations of the Scientific Committee with respect to all new, ongoing and completed special permit programmes. This Working Group will be constituted separately for each new, ongoing and completed special permit programme considered by the Scientific Committee. The membership of the Working Group will represent the range of opinions on the issue of special permits but will limit its role to providing a factual, accessible and succinct report to the Commission plenary on the matters specified in paragraph 1(a) to (e). The Contracting Government proposing or responsible for the special permit programme in question will be eligible to participate in the Working Group as an observer only. The Working Group will meet intersessionally in the lead up to and/or during a Commission

meeting as the Working Group, in consultation with the Bureau, sees fit. Specifically, this Working Group will:

- a. Provide the Commission with 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. Advise the Commission 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. Summarise for the Commission 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. Provide the Commission with its own recommendations, arising from the review of the new, ongoing or completed special permit programmes in question, 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. Provide the Commission with any other relevant information or, advice from the Scientific Committee, arising from the new, ongoing or completed special permit programme and review in question.
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 schedule any special permit programmes such that proposals for new special permit programmes, and review documentation for ongoing and completed special permit programmes, are submitted at least six months before the Scientific Committee meeting held in the same year as a Commission meeting;
 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; and
 - b. included in ongoing or final programme reviews.
 5. **Instructs** the Scientific Committee to inform the Commission as to whether Committee members had unrestricted and continuing access to data collected under special permit programmes, and analyses thereof;
 6. **Further instructs** the Scientific Committee to complete its evaluation of proposals at its meeting held in the same year as a Commission meeting, 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 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.