

The Judgment of the International Court of Justice (ICJ) in the case concerning “Whaling in the Antarctic” and New Scientific Whale Research Program in the Antarctic Ocean (NEWREP-A)

1. ICJ Judgment in the case concerning “Whaling in the Antarctic”

In March 2014, The ICJ delivered its Judgment ordering discontinuation of the Second Japanese Whale Research Program in the Antarctic (JARPA II)¹, that Japan was conducting at the time. The ICJ Judgment, however, did not deny the use of lethal methods per se². Furthermore, the Judgment stated “[i] It is to be expected that Japan will take account of the reasoning and conclusions contained in this Judgment as it evaluates the possibility of granting any future permits under Article VIII, paragraph 1, of the Convention”. (Paragraph 246 of the ICJ Judgment)

([WHALING IN THE ANTARCTIC \(AUSTRALIA v. JAPAN: NEW ZEALAND intervening\), Judgment, I.C.J. Reports 2014](#))

2. ICJ Judgment and NEWREP-A

Japan’s new research program (NEWREP-A) was developed duly taking account of the ICJ Judgment mentioned above. In NEWREP-A, measures noted below have been taken in light of the ICJ Judgment. NEWREP-A thus has responded to the expectations stated in the above mentioned paragraph of the ICJ Judgment and therefore is consistent with the Judgment.

¹ See paragraph 247(7). In its reasoning, the ICJ considered that while JARPA II activities can broadly be characterized as scientific research, “the evidence does not establish that design and implementation of JARPA II are reasonable in relation to achieving its research objectives (paragraph 227).

² See paragraph 135.

Some of the Main Points in the ICJ Judgment and the Measures Taken by Japan in NEWREP-A

○“The JARPA II Research Plan should have included some analysis of the feasibility of non-lethal methods as a means of reducing the planned scale of lethal sampling.”

→ *The feasibility of non-lethal methods (e.g. age-determination using DNA derived from biopsy samples) has been examined.*

○“The evidence relating to whale sample sizes provides scant analysis and justification for the underlying decisions that generate the overall sample size. This raises further concerns about whether the design of JARPA II is reasonable in relation to achieving its stated objectives.”

→ *Clear grounds for the overall sample size for NEWREP-A has been provided.*

○“Japan’s statement that JARPA II can obtain meaningful scientific results based on the far more limited actual take suggests that the target sample sizes are larger than are reasonable in relation to achieving its stated objectives.”

→ *The sample size has been set at what is necessary and sufficient to achieve the research objectives. As research activities could be disrupted by some factors including bad weather conditions, a contingency backup plan which addresses adjustment of the research plan and consideration of alternative analytical methods has been established in advance.*

○“JARPA II’s open-ended time frame casts doubt on its characterization as a program for purposes of scientific research.”

→ *The research period of NEWREP-A is 12 years. It has also established “intermediary targets” with a system of mid-term review after 6 years.*

○“In light of the fact JARPA II has been going on since 2005 and has involved the killing of about 3,600 minke whales, the scientific output to date appears limited.”

→ *The scientific output has been and will continue to be presented to the IWC Scientific Committee and there will be increased efforts to publish scientific achievements in peer-reviewed journals. Scientific data generated from this research has been compiled in a database and will be promoted to be widely utilized by scientists.*