



Whaling in the Antarctic (Australia v. Japan)

ARGUED: 20 November 2016

DECIDED: 20 November 2016

1 Submit the following dissenting opinion in the case of Australia v. Japan

2 We must respectfully dissent from the majority opinion. We base this dissent on our understanding of the
3 Plan for the Second Phase of Japanese Whale Research Program under Special Permit in Antarctic (JARPA II).

4 We the Dissent concur in part with the majority opinion regarding the need for further transparency in
5 whaling programs. We also concur with the majorities reasoning with regard to the International Court of Justice's
6 (ICJ) jurisdiction in regards to this case. We find evidence that JARPA II should not continue in its current form
7 in light of the issues found within its current structure.

8 We the Dissent find flaw in the design and implementation of JARPA II. We also find there to be unscientific
9 statistical models and inconsistencies in lethal sampling scales. The ratio of whales to include in the sample as set
10 out in the plan of JARPA II is not representative of the ratios of the taken sample. The JARPA II plan stated
11 that the appropriate sample size of each species of whale would be as follows: 50 humpback whales, 50 fin whales,
12 and 800 (+/-10% of the sample) minke whales. By this ratio, 88% of whales caught would be minke whales, with
13 humpback and fin whales comprising 6% each of the sample. However, in implementation, JARPA II's sample was
14 grossly inconsistent with these proportions. In actuality, the sample was 99.5% minke whales, 0.5% fin whales, and
15 0% humpback whales. This is far beyond the acceptable range for deviance from the planned sample size, especially
16 given that the types of whales taken is a controllable percentage.

17 We find that JARPA II does unlawfully continue to operate under the guise of "good faith." The Convention of
18 International Trade in Endangered Species of Wild Fauna and Flora (CITES) states in its preamble that contracting
19 states recognize that wild fauna and flora, "...are an irreplaceable part of the natural systems of the earth which
20 must be protected for this and the generations to come." Japan has failed to satisfy the requirements of this treaty
21 in addition to violating terms enforced within two other treaties, part three, section one, article 26 of the Vienna
22 Convention on the Law of Treaties (1969);

23 "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"

24 And also article nine, sections b and c of the Convention on Biological Diversity;

25 "b. Establish and maintain facilities for ex-situ conservation of and research on plants, animals and micro-
26 organisms, preferably in the country of origin of genetic resources." "c. Adopt measures for the recovery and rehabil-
27 itation of threatened species and for their reintroduction into their natural habitats under appropriate conditions."

28 Additionally, JARPA II demonstrated a lack of good faith and scientific collaboration in their response to the
29 resolutions passed by the Scientific Committee of the International Whaling Commission (IWC). Resolution 2005-1,
30 passed by the IWC, "strongly urges the government of Japan to withdraw its JARPA II proposal or to revise it so
31 that any information needed to meet the stated objectives of the proposal is obtained using non-lethal means." The
32 government of Japan opted to ignore the wishes of the IWC, despite the fact that the IWC is a recognized authority
33 on whaling. Furthermore, IWC Resolution 2007-1 called upon the Government of Japan to "suspend indefinitely
34 the lethal aspects of JARPA II conducted within the Southern Ocean Whale Sanctuary." Again, the government of
35 Japan opted to continue with JARPA II with no modifications. This blatant disregard for the scientific opinion of
36 the IWC signifies that the government of Japan's intentions with regard to JARPA II are not in "good faith."

37 In the opinion of the Dissent, we feel that JARPA II should cease further studies until the methodology and
38 sample size is corrected to a methodology and sample size agreeable to the Scientific Committee of the International
39 Whaling Commission.

Signed By

Justice Buxton

Justice Madrigal

Justice Weeks

Justice Selvaggi

Justice Strum

Justice Ali

Justice Quinn

Justice Johnson

Justice Nelson

Justice Farley

Justice Larsen

Justice Gross

Justice Harris

Justice Conizales

Justice Henning

Justice Roehm