

**Forum:** International Court of Justice

**Issue:** Whaling in the Antarctic (Australia v. Japan: New Zealand intervening) 2010-2014

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## Introduction

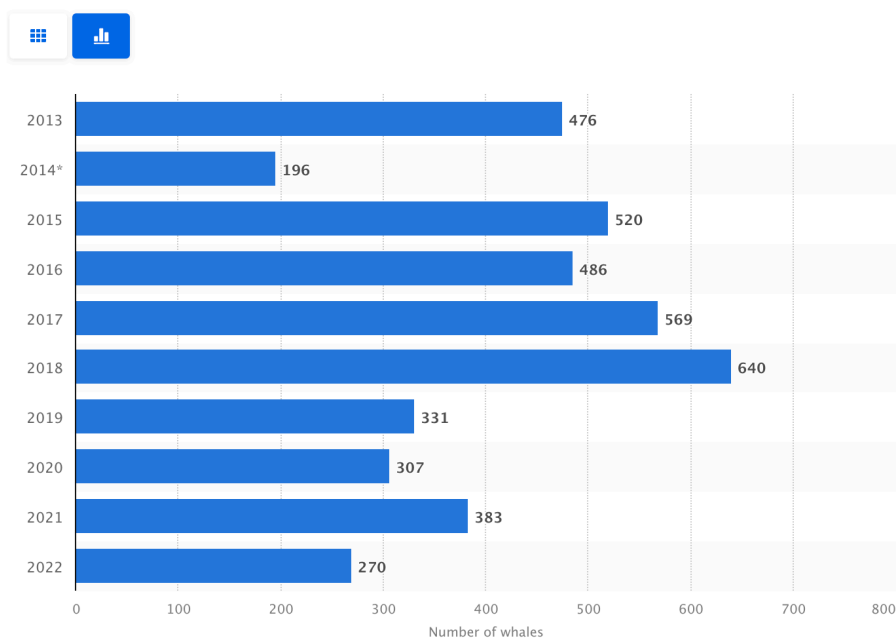
Whaling in the Antarctic has violated environmental conservation, international law, and cultural tradition. Historically, following World War II, Japan greatly expanded its commercial whaling to combat a shortage of animal protein in the country. As an island nation, Japan has relied on its fishing industries to fulfill the population's demand for animal products, including whales. The International Whaling Commission (IWC) reports that "over two million whales were killed during the 20th century" (IWC), pushing several whale species to extinction. Hence, this led to a ban on commercial whaling in 1986 to allow whale populations to recover. Despite the moratorium, Japan continued its whaling activities under the purpose of so-called scientific research through its JARPA II program. Between 2005 and 2014, Japan issued permits resulting in the killing of approximately 3,600 minke whales, along with smaller numbers of fin and humpback whales.

Ultimately, between 2010 and 2014, this issue escalated when Australia brought a legal case against Japan at the International Court of Justice (ICJ), criticizing that Japan's whaling program violated international obligations. Japan defended its actions by asserting that JARPA II was a legitimate scientific opportunity permitted under Article VIII of the International Convention for the Regulation of Whaling (ICRW). Australia challenged these actions, arguing that "the number of whales killed under JARPA programs is more than necessary for the research carried out but, despite that, the number of whales targeted for capture has quintupled since 1987" (Krepitch). New Zealand further supported Australia, underscoring the regional and global importance of the dispute.

Australia contended that the program was intended for commercial whaling, thereby violating the moratorium imposed by IWC. In its 2014 judgment, the ICJ found that Japan's JARPA II program did not conform to the provisions of the ICRW. The court noted that "the evidence [...] did not establish that the program's design and implementation are reasonable in relation to achieving its stated objectives" ("Whaling in the Antarctic"). It highlighted that the program resulted in the lethal sampling of a significant number of whales without sufficient scientific justification. Ultimately, The Court concluded that Japan must revoke any existing permits for whaling under JARPA II and refrain from issuing new ones.

Despite the ruling, tensions persisted. Japan announced the development of a new research initiative called NEWREP-A (New Scientific Whale Research Program in the Antarctic Ocean). Japan claimed that this new program was designed to address the concerns raised by the ICJ by significantly reducing the number of whales targeted and by providing stronger scientific justifications for lethal sampling. Specifically, Japan proposed to annually take up to “333 annual figures of Antarctic minke whales in the Southern Ocean” (Milman), a substantial decrease from previous quotas under JARPA II. However, this has led to international criticism and raised concerns from the International Whaling Commission (IWC). Based on the following data, Japan has intensified its whaling activities to the present day.

**Number of whales hunted in Japan from 2013 to 2022**



## Definition of Key Terms

### Whaling

The hunting of whales for food and oil.

### Commercial Whaling

The hunting and killing whales for the purpose of selling and trading their meat and other products derived from them. Historically significant in many coastal cultures, whaling has been a source of food and economic profit. One of the major Japanese commercial whaling enterprise was Kyodo Senpaku Co.

### Moratorium

A temporary prohibition of an activity, often implemented to protect endangered species or ensure resource sustainability.

### Sovereignty

Authority to govern themselves without external interference, including making decisions about natural resource use within their territories.

### **Jurisdiction**

The official power or the authority of ICJ to make legal decisions and judgments.

### **Conservation**

Actions taken to protect and sustain the populations of species, particularly those at risk of extinction, by regulating human activity that impacts their habitats. In the case of whales, conservation efforts include the implementation of international treaties like the IWC's regulations.

## **Timeline of Events**

### Implementation of the Commercial Whaling Moratorium: 1986

The International Whaling Commission (IWC) implemented a moratorium on commercial whaling in 1986 due to the significant decline in whale populations caused by extensive hunting. The moratorium declared that "catch limits for the killing for commercial purposes of whales... shall be zero" (IWC Schedule, 1986). This event established the legal framework that Australia argued Japan was violating through its JARPA II program.

### Japan's JARPA II Program: 2005

Japan launched the Second Phase of the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA II) in 2005. The program aimed to study "for the appropriate management and utilization of whale resources in the Antarctic" (Institute of Cetacean Research). However, it involved the annual lethal sampling of up to 935 minke whales, 50 fin whales, and 50 humpback whales.

### Australia Intervention at the ICJ: May 31, 2010

Australia filed legal proceedings against Japan at the International Court of Justice (ICJ), alleging that Japan's whaling activities under JARPA II were unethical and immoral, violating the obligations under the International Convention for the Regulation of Whaling (ICRW). This marks the formal beginning of legal actions taken to fight against this issue.

### New Zealand's Intervention: November 20, 2012

New Zealand showed its support to Australia, citing "a direct interest in the construction that might be placed upon the Convention by the Court in its decision in the proceedings" ("Whaling in the Antarctic"). New Zealand emphasized its effort for whale conservation and Japan's violence of international law regarding "scientific" whaling.

### Oral Hearings at the ICJ: June 26 to July 16, 2013

The ICJ held oral hearings where Australia argued that Japan's argument of its action as "scientific research" was unreasonable. Japan showed its firm attitude, as they believed their action as legal due to the permission from Article VIII of the ICRW. However, Australia argued that "commercial whaling masquerading as science" (ICJ Verbatim Record, 2013).

ICJ's Punishment: March 31, 2014

ICJ ordered Japan to revoke existing permits and refrain from granting any further permits under JARPA II.

Japan's Acceptance: April, 2014

The Ministry of Foreign Affairs stated, "As a state that respects the rule of law [...] Japan will abide by the Judgment of the Court" (Tsuruoka). Japan canceled its 2014-2015 Antarctic whaling season.

## Position of Major Parties Involved

- **Japan**

Japan claims its whaling activities, including the JARPA II program launched in 2005, are for scientific research, with the killing of over 400 whales in the Antarctic. In 2011, the total cost of Japan's whaling program was estimated at around \$30 million USD. However, the program faced international criticism for its questionable scientific value, and in 2014, the International Court of Justice ruled it was not for legitimate research purposes. Despite this, Japan continued whaling through the NEWREP-A program and withdrew from the IWC in 2019 to resume commercial whaling. Australia's government and environmental NGOs have strongly opposed Japan's actions, arguing they violate conservation efforts and international law, with concerns about the impact on whale populations and marine ecosystems.

- **Australia**

Australia has been proactive in resolving this issue, as they were the first ones to file a case against Japan at the ICJ in 2010, reporting Japan that they are violating international obligations under the ICRW. Australia, as a sea-locked and marine-dependent country, has shown an effort to conserve marine life in its territory. Additionally, Japan's whaling further concerns Australia, as whale watching is a significant industry in Australia that further influences tourism industries. Specifically, in 2008, over 1.6 million people went whale watching in Australia, generating AUD \$47 million in ticket expenditure and AUD \$264 million in total tourism expenditure. The decline in whale populations due to whaling could severely impact this thriving industry. Hence, Australia has shown strong opposition to all forms of commercial whaling.

- **New Zealand**

New Zealand, also a sea-locked country, is dedicated to protecting marine ecosystems and shares the same region as Australia. In this current issue, New Zealand strengthened the case at the ICJ by intervening in the legal proceedings as a non-party supporter of Australia. They have worked alongside Australia in diplomatic and environmental initiatives to combat Japan's whaling actions. Their stance emphasizes that Japan should strictly follow the obligations of ICRW, opposing commercial whaling.

- **International Whaling Commission (IWC)**

IWC has the aim of “providing for the proper conservation of whale stocks and orderly development of the whaling industry.” In this case, they have provided the legal structure under which whaling is monitored and regulated, specifically investigating the JARPA II and NEWREP-A projects.

- **Environmental Non-Governmental Organizations (NGOs)**

The NGOs involve World Wide Fund (WWF), Sea Shepherd Conservation Society, International Fund for Animal Welfare (IFAW), etc. They all focus on the protection of marine ecosystems and the preservation of whale species. They have been involved in this situation, as they raised awareness of Japan's whaling activities through media and educational programs. The United Nations has also accentuated the convention of marine lives by banning exploitation of marine species, including whales. They have signed the United Nations Convention on the Law of the Sea (UNCLOS), which is further introduced in the Document Section. Working with these NGOs can be an effective resolution that addresses this problem.

## Burden of Proof

Condition 1: Japan's activities under JARPA II negatively impact whale populations, influencing their conservation and violating the objectives of the ICRW.

- Australia needs to demonstrate that the killing of whales under JARPA II poses a threat to the recovery and sustainability of whale species, which contradicts the international conservation goals agreed upon.

Condition 2: Japan's JARPA II whaling program is not conducted for purposes of scientific research as specified under Article VIII of the International Convention for the Regulation of Whaling (ICRW).

- Australia must demonstrate that the implementation of JARPA II is not reasonable in relation to achieving its stated scientific objectives.

Condition 3: Japan, by JARPA II, is breaking the moratorium on commercial whaling established by the IWC, thereby violating its international obligations

- Australia must prove that the scale of the JARPA II follows the standard of commercial whaling operating under the pretense of scientific research, thereby violating the IWC moratorium on commercial whaling.

Condition 4: Japan's issuance of special permits under JARPA II violates specific provisions of the ICRW, such as the prohibition on factory ship whaling and regulations concerning the Southern Ocean Sanctuary.

- Australia must prove that Japan's whaling activities under JARPA II occur within the Southern Ocean Sanctuary. Additionally, the ICRW prohibits the use of factory ships for processing certain species. Hence, Australia must prove that Japan's whaling activities involve factory ships or prohibition methods in its JARPA II operations.

Condition 5: Japan's whaling activities affect other international environmental obligations, such as those under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

- Australia can prove that, by engaging in whaling practices that affect species listed under CITES, Japan is violating additional international agreements aimed at protecting endangered species from over-exploitation

## Key Documents

Document 1: [International Convention for the Regulation of Whaling \(ICRW\) - \(Article VIII\)](#)

The International Convention for the Regulation of Whaling (ICRW) was signed on December 2, 1946, and came into force on November 10, 1948. The convention established the International Whaling Commission (IWC) to regulate whaling activities worldwide and ensure the conservation of whale populations. This article allows member nations to issue special permits for the killing, taking, and treating of whales for purposes of scientific research.

Document 2a: [International Whaling Commission \(IWC\) Schedule \(Paragraph 10\(e\): Moratorium on Commercial Whaling\)](#)

The moratorium aims to protect depleted whale populations by setting commercial catch limits to zero, effectively banning commercial whaling. This schedule contains binding regulations that are periodically amended, including Schedule 2012, Schedule 2014, Schedule 2016, and Schedule 2018. The moratorium was adopted in 1982 and came into effect for the 1985/1986 whaling seasons.

Document 2b: [International Whaling Commission \(IWC\) Schedule \(Paragraph 7\(b\): Southern Ocean Sanctuary\)](#)

In 1994, the IWC established the Southern Ocean Sanctuary through Paragraph 7(b) of the Schedule. This sanctuary prohibits commercial whaling in designated waters surrounding Antarctica. Paragraph 7(b) specifies the geographic boundaries of the sanctuary and states that commercial whaling is prohibited within these waters.

Document 3: [United Nations Convention on the Law of the Sea \(UNCLOS\) – \(Articles 65 and 120\)](#)

This document was signed on December 10, 1982, and took into effect on November 16, 1994. UNCLOS obliges states to cooperate on the conservation of marine mammals and allows for stricter regulations than those generally applied to marine resources. Articles 65 and 120 emphasize the prohibition of exploitation of marine mammals more strictly.

Document 4: [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#)

CITES was signed on March 3, 1973, and entered into force on July 1, 1975. It is an international agreement aiming to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Numerous whale species were as threatened with extinction, where trade in specimens of these species is permitted only in exceptional circumstances.

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