

HUMANE SOCIETY INTERNATIONAL INC

Applicant

KYODO SENPAKU KAISHA LTD

Respondent

AFFIDAVIT OF NICOLA JANE BEYNON

(Order 14, rule 2)

On 18 October 2004 I, Nicola Jane Beynon, Wildlife and Habitats Program Manager, Humane Society International Inc, of Suite 5A, Level 1 of 27 Old Barrenjoey Road, Avalon in the State of New South Wales, affirm –

1. I hold a Bachelor of Arts (Honours) in geography from Oxford University and Masters of Science in conservation from University College London.
2. I have been employed by the Humane Society International Inc since 1998 and have been the Wildlife and Habitats Program Manager since 2000. Since 1998 I have been responsible for campaigning for the conservation of whales internationally and in Australia.

Background to the Antarctic whaling activity

3. The International Whaling Commission (“**IWC**”), which is established under the *International Convention for the Regulation of Whaling (International Whaling Convention) 1946* (“**International Whaling Convention**”), meets in the middle of each year. I have attended those meetings annually since 2000 as a representative of the Humane Society International Inc.
4. An international moratorium on all commercial whaling was declared under the International Whaling Convention by the IWC in 1982, and took effect in 1985/86. Annexed to this affidavit and marked “**NJB-1**” is the schedule to the International Whaling Convention, paragraph 10(e) of which imposes the moratorium on whaling.
5. Despite the official moratorium on commercial whaling, the Government of Japan continues to permit “research” involving the killing of whales and ultimate sale of

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Deponent

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AFFIDAVIT OF NICOLA JANE BEYNON
Filed on behalf of the applicant
Form 20 (Order 14, rule 2)

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the whale meat in Japan. The killing of Antarctic minke whales (*Balaenoptera bonaerensis*) in Antarctic waters is conducted under the *Japanese Whale Research Program under Special Permit in the Antarctic* (“JARPA”) and has been conducted every year since the 1987/88 season in purported compliance with Article VIII of the International Whaling Convention.

6. Pursuant to paragraph 3 of Article VIII of the International Whaling Convention, cruise reports are submitted to the Scientific Committee of the IWC annually by persons involved in the JARPA. These reports, whose listed authors include employees of the respondent, set out the nature, duration and location of the research undertaken, including reporting the number and location of Antarctic minke whales killed.

Evidence of the Antarctic whaling activity since 2000

7. Annexed to this affidavit and marked “NJB-2” is the *Cruise Report of the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) Area V and Western Part of Area VI in 2000/2001* (“**the 2000/2001 Cruise Report**”), submitted by the Government of Japan to the IWC meeting in 2001. I obtained this report at the IWC meeting in 2002.
8. Annexed to this affidavit and marked “NJB-3” is the *Cruise Report of the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) Area IV and Eastern Part of Area III in 2001/2002* (“**the 2001/2002 Cruise Report**”), submitted by the Government of Japan to the IWC meeting in 2002. I obtained this report at the IWC meeting in 2002.
9. Annexed to this affidavit and marked “NJB-4” is the *Cruise Report of the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) Area V and Western Part of Area VI in 2002/2003* (“**the 2002/2003 Cruise Report**”), submitted by the Government of Japan to the IWC meeting in 2003. I obtained this report at the IWC meeting in 2003.
10. Annexed to this affidavit and marked “NJB-5” is the *Cruise Report of the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) Area IV and Eastern Part of Area III in 2003/2004* (“**the 2003/2004 Cruise Report**”), submitted by the Government of Japan to the IWC meeting in 2004. I obtained this report at the IWC meeting in 2004.
11. Note that the cruise reports generally use the euphemism “sampled” for the killing, cutting up and processing of a whale. The fact that the whales were killed is logically inferred from the tables (such as Table 6 in the 2000/2001 Cruise Report) that show the reproductive status of the whales collected. This status is determined through dissecting the whales after capture. Other tables (such as Table 5 of the 2000/2001 Cruise Report) summarise data that could only have been obtained by killing of the whales involved (e.g. measurements of skull size and stomach contents). The cruise reports also note the total of meat, blubber, viscera, etc. that was produced by processing the killed whales. Finally, the

2001/2002 and 2003/2004 Cruise Reports also note the killing method as follows (under the heading “Sampling of Antarctic minke whales”):

“Special attention to reduce the time of death was given to all targeted and sampled whales. Explosive harpoons were used for all targeted whales as the primary killing method. A large calibre rifle was used as the secondary killing method when required.”

- 12. In addition to the cruise reports, on 1 January 2002 the Australian vessel *Aurora Australis* encountered the respondent’s vessels conducting whaling operations at 63° 54.6’ South latitude and 82° 48’ East longitude, a position that is 38 nautical miles within the Australian exclusive economic zone. Annexed to this affidavit and marked “**NJB-6**” is a copy of a response by the Australian Antarctic Division to a freedom of information request, which includes copies of email transmissions from the Voyage Leader aboard the *Aurora Australis* of this encounter.

Boundaries of the Australian Whale Sanctuary

- 13. On 16 July 2000 the Australian Government established the Australian Whale Sanctuary (“**AWS**”) under section 225 of the *Environment Protection and Biodiversity Conservation Act 1999*, comprising all of the waters of Australia’s exclusive economic zone (“**EEZ**”), including the EEZ adjacent to the Australian Antarctic Territory.
- 14. Annexed to this affidavit and marked “**NJB-7**” is a copy of edition 2 of *The Australian Map Series: Australia’s Maritime Zones*, produced by Geoscience Australia on behalf of the Commonwealth of Australia in 2002 (Map reference MP 02/343.21) (“**the map**”), which displays Australia’s EEZ and, hence, the boundaries of the Australian Whale Sanctuary.

Evidence that Antarctic minke whales are cetaceans

- 15. The cruise reports state that the whales killed are Antarctic minke whales (*Balaenoptera bonaerensis*). This species is also commonly referred to as the “Southern Hemisphere minke whale”. Annexed to this affidavit and marked “**NJB-8**” is a copy of the IWC classification of Order Cetacea (whales, dolphins and porpoise), which I obtained from the IWC website at URL <http://www.iwcoffice.org/conservation/cetacea.htm> (viewed 24 September 2004). The Antarctic minke whale species is a member of the Order Cetacea, Sub-order Mysticeti (baleen whales or mysticetes) and Family Balaenopteridae.
- 16. Some mention is made in the cruise reports of “dwarf form minke whales”, which is generally regarded as a subspecies of the Common minke whale (*Balenoptera acutorostrata*). The dwarf form minke whale is not a target species for the whaling although it is found in Antarctic waters.

Specific evidence of whaling within the AWS

- 17. While the 2000/2001 Cruise Report indicates that “a total of 477 Antarctic minke whales were targeted for sampling resulting in the catch of 440 individuals”

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comparison of the stated location of the whaling activity and the AWS indicates that the majority of the whaling activity occurred outside of the AWS.

18. Only the “West South” portion of Area V (shown in Figure 1 of the 2000/2001 Cruise Report), in which whaling occurred from 25 February 2001 to 20 March 2001, coincides with the AWS. Table 6 indicates that within this area 71 male and 37 female Antarctic minke whales were killed, a total of 108 whales. The “West South” portion of Area V is not defined precisely in the 2000/2001 Cruise Report with reference to the AWS but merely as between 130° East to 165° East longitude and south of “a line of 45 n.miles northward from the ice edge line”. This area is wider than the AWS on that portion of the coastline of the Australian Antarctic Territory (between 142° East to 160° East longitude), and therefore the number of 108 is likely to be greater than the number of minke whales killed within the AWS.
19. The research methods for the 2000/2001 Cruise Report (under the heading “Cruise track line and sighting and sampling method”) state that, “one Antarctic minke whale was sampled randomly from each primary sighted school within 3 n.miles of the track line.” Assuming from this statement that one whale was killed per school sighted in Figure 3, and cross-referencing the locations of sightings shown in Figure 3 with the boundaries of the AWS, a conservative count of the number of Antarctic minke whales killed within the AWS is 36.
20. The 2001/2002 Cruise Report contains more precise references to the location of whaling. Particular reference is made of the killing of a pregnant female Antarctic minke whale (at page 6 of the 2001/2002 Cruise Report):

“Mark recapture (Discovery tag)

Two discovery tags (No. 43924 and No. 39415) were recovered from a whale during the biological research on 31 January 2002. The whale was sighted as a solitary school at 66°37’S, 120°47’E (East-south stratum in Area IV). This whale (sample number 250) was a pregnant female with body length of 8.94 m and body weight of 7.70 t. Fetal body length was 46.3cm. ...”

21. Comparison of the location given of 66° 37’ South latitude, 120° 47’ East longitude at which this pregnant female minke whale was sighted with the boundaries of the AWS indicates that it was approximately 150 nautical miles within the AWS. The whale was undoubtedly killed because it would not have been possible to measure the foetal body length without dissecting the mother’s body.
22. While the 2001/2002 Cruise Report indicates that “a total of 493 Antarctic minke whales were targeted for sampling resulting in the catch of 440 individuals”, comparison of the stated location of the “research” and the AWS indicates that there is considerable, though not complete overlap, overlap with the AWS adjacent to the Antarctic coastline between 45° East to 136° East longitude. In particular Prydz Bay, in which Table 6 indicates 25 minke whales were killed, lies virtually completely within the AWS.

23. By cross-referencing the location of the AWS with the stated position of whales “sampled” / killed in Figure 7 of the 2001/2002 Cruise Report, a total of approximately 215 Antarctic minke whales were killed within the AWS adjacent to the Australian Antarctic Territory between 45° East to 136° East longitude from 29 November 2001 to 9 March 2002.
24. The encounter of the *Aurora Australis* indicates that the respondent’s vessels were conducting whaling operations while located 38 nautical miles within the AWS at 63° 54.6’ South latitude and 82° 48’ East longitude on 1 January 2002.
25. The 2002/2003 Cruise Report states that, “out of 1,582 schools/ 4,506 individuals in the primary sightings of Antarctic minke whales ... a total of 440 individuals were sampled”. However, a comparison of the boundaries of the AWS and the location of the “research” in Figure 7 of the 2002/2003 Cruise Report indicates that approximately 13 Antarctic minke whales were killed within the AWS. This occurred in waters adjacent to the Antarctic coastline between 142° East to 160° East longitude from 21 February 2003 to 8 March 2003. I also note that Figure 7 is entitled, “Sighted position of sampled Antarctic minke whales by sex and reproductive status in 2000/2001 JARPA”; however, the reference to “2000/2001” appears to be a typographical error as the text of the report indicates that this figure shows the 2002/2003 sampling results.
26. Similarly, while the 2003/2004 Cruise Reports states that, “a total of 440 Antarctic minke whales was [sic] sampled”, by cross-referencing the location of the AWS with the stated position of whales “sampled” / killed in Figure 6 of the 2003/2004 Cruise Report, approximately 164 Antarctic minke whales were killed within the AWS. This occurred adjacent to the Australian Antarctic Territory between 45° East to 136° East longitude from 30 November 2003 to 3 March 2004.
27. Annexed to this affidavit and marked “**NJB-9**” are extracts of the relevant figures from the 2000/2001, 2001/2002, 2002/2003 and 2003/2004 Cruise Reports referred to in paragraphs 18-26 of this affidavit showing the approximate position of the AWS based on the boundaries shown in the map of Australia’s EEZ (exhibit NJB-7). The location of the AWS is shown in florescent yellow colour and the numbers of Antarctic minke whales calculated to have been killed within the AWS are shown in red, handwritten numbers. Due to the scale of the maps the calculations of the number of whales killed within the AWS are approximates only; however, it is clear that, at the very least, a large number of Antarctic minkes whales were killed within the AWS.
28. It is evident from comparing the counts of Antarctic minke whales killed within the AWS with the total number of whales shown in the figures that my calculations of the number of whales killed within the AWS are likely to underestimate the total number of whales actually killed, at least for the 2001/2002 and 2003/2004 Cruise Reports. This is evident from the following matters:
- (a) In each year the total number of Antarctic minke whales stated to have been killed was 440.

- (b) In Figure 7 of the 2001/2002 Cruise Report, assuming that all of the Antarctic minke whales that were killed are shown, while approximately 215 whales appear to have been killed within the AWS, only approximately 74 are shown on the figure outside of the AWS. This leaves a shortfall of 151 (based on the calculation of $440 - (215 + 74) = 151$).
- (c) In Figure 6 of the 2003/2004 Cruise Report, assuming that all of the Antarctic minke whales killed are shown, while approximately 164 whales appear to have been killed within the AWS, only approximately 93 are shown on the figure outside of the AWS. This leaves a shortfall of 196 (based on the calculation of $440 - (164 + 93) = 196$).
29. A possible reason for the apparent underestimation of the Antarctic minke whales killed within the AWS is that because of the scale of the maps, the symbols showing the locations of killed whales are obscured by others. Whatever the reason for the discrepancy, at the very least it is evident that a large number of whales were killed within the AWS and the estimates of numbers are reasonable approximates that are “in the order” of magnitude of the true numbers of whales killed within the AWS.
30. In summary, the following table states the total number of Antarctic minke whales killed between 2000-2004 by the respondents under the JARPA and the approximate number that were killed within the AWS:

Table 1: Summary of the evidence of the number of Antarctic minke whales killed generally under the JARPA and the approximate number killed specifically within the AWS

YEAR	Total of Antarctic minke whales killed under the JARPA	Approximate number of Antarctic minke whales killed within the AWS
2000/2001	440	36
2001/2002	440	215
2002/2003	440	13
2003/2004	440	164

Evidence of future whaling

31. While the Cruise Reports are submitted to the IWC Scientific Committee following each whaling season, each year at the IWC meeting the Government of Japan also submits a Research Plan for the coming whaling season. At the 2004 IWC meeting I obtained the *2004/2005 Research Plan of the Japanese Whale Research Program Under Special Permit in the Antarctic (JARPA)* (“**the 2004/2005 Research Plan**”), submitted by the Government of Japan to the IWC in July 2004. It states that further “sampling” (i.e. lethal research or killing) of 440

Antarctic minke whales will be undertaken in Area IV and Area IIIE in 2004/2005 (during December 2004 until February 2005) by the respondent's whaling vessels. Annexed to this affidavit and marked "NJB-10" is a copy of the 2004/2005 Research Plan.

- 32. Only part of the area proposed for the coming whaling corresponds with the AWS; however, based on the evidence of the location and number of whales killed in the 2000/2001 and 2002/2003 whaling seasons (which were also in Area IV and Area IIIE), it is likely that in the order of 13 to 36 Antarctic minke whales will be killed within the AWS from late February 2005 to early March 2005.
- 33. In relation to subsequent whaling, the 2004/2005 Research Plan states that the JARPA is "to end following the 2004/2005" season, which would mean that this whaling season would be the last whaling undertaken by the respondent in the AWS.
- 34. However, annexed to this affidavit and marked "NJB-11" are relevant extracts from a report from the IWC Scientific Committee in 2004, which states in section 16.2.1.2 on page 52 that:

"Hatanaka [a representative of the Government of Japan] reported that Japan will host a meeting reviewing JARPA results (limited to the first 15 years of JARPA) open to interested scientists in early 2005 prior to the Ulsan meeting. It was agreed by the Committee that this meeting would be considered a non-IWC sponsored workshop. Hatanaka commented that recommendations from that workshop would be used to design a JARPA II proposal."

- 35. On the basis of this information and my knowledge of the Japanese whaling activity in the Antarctic from attending IWC meetings over the past 5 years, I verily believe that the killing of Antarctic minke whales will continue in essentially the same manner and same areas in future years under a second phase of the *Japanese Whale Research Program under Special Permit in the Antarctic* ("JARPA II").

Affirmed by)
 NICOLA JANE BEYNON)
 at Sydney this)
 18th day of October 2004)
 before me:) Deponent

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 Justice of the Peace/Solicitor

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