

HUMANE SOCIETY INTERNATIONAL INC

Applicant

KYODO SENPAKU KAISHA LTD

Respondent

AFFIDAVIT OF KIERAN PAUL MULVANEY
(Order 14, rule 2)

On 9 November 2004 I, Kieran Paul Mulvaney, author, of 1219 West 6th Avenue, Anchorage, Alaska 99501 in the United States of America, affirm:

1. I worked in anti-whaling campaigns by the international conservation organisation Greenpeace for over a decade.
2. In particular I was employed by Greenpeace for four direct-action campaigns involving expeditions to the Antarctic to document and raise international awareness of the whaling carried out by the respondent in the Antarctic:
 - (a) during 1991-1992 I was the media coordinator for Greenpeace's Antarctic whaling campaign aboard the motor vessel ("MV") *Greenpeace*;
 - (b) during 1992-1993 I was the expedition leader for Greenpeace's Antarctic whaling campaign aboard the MV *Greenpeace*;
 - (c) during 1994-1994 I was the expedition leader for Greenpeace's Antarctic whaling campaign aboard the MV *Greenpeace*; and
 - (d) during 2001-2002 I was the expedition leader for Greenpeace's Antarctic whaling campaign aboard the MV *Arctic Sunrise*.
3. As the expedition leader I was responsible for overall strategic planning of the expedition and direction of the vessel. Due to my many years at sea I have

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AFFIDAVIT OF KIERAN PAUL
MULVANEY
Filed on behalf of the applicant
Form 20 (Order 14, rule 2)

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extensive experience in navigation of ships. Due to my long involvement in anti-whaling campaigns I have extensive experience in the identification of whales, including Antarctic minke whales (*Balaenoptera bonaerensis*).

4. I have been asked by the applicant to document any evidence of whaling activity by the respondent that I witnessed during the 2001-2002 anti-whaling campaign.
5. In particular I have been asked by the applicant to document the locations of that whaling activity with reference to the Australian Whale Sanctuary shown as the Australian exclusive economic zone on a map of *Australia's Maritime Zones* (2nd edition, Commonwealth of Australia, Canberra, 2002), which is exhibit NJB-7 to the affidavit of Nicola Jane Beynon (18 October 2004). I have done this with reference to the ship's log kept by the ship's captain, Andrew Troia. I had direct knowledge that it was correctly kept by the ship's captain.
6. On 13 December 2001 the *Arctic Sunrise* located the respondent's whaling fleet at Latitude 60° 37' South, Longitude 045° 57'7" East, approximately 150 nautical miles outside of the Australian Whale Sanctuary.
7. The fleet consisted of five vessels:
 - (a) MV *Nisshin Maru* (the factory ship used for processing the killed whales);
 - (b) MV *Yushin Maru* (a "catcher" used for chasing and killing whales);
 - (c) MV *Kyo Maru No.1* (a second catcher);
 - (d) MV *Toshi Maru No. 25* (a third catcher); and
 - (e) MV *Kyoshin Maru No. 2* (a sighting/survey vessel only, not used for chasing or killing whales but which steamed ahead of the fleet to locate whales).
8. Following a radio transmission from our vessel in which we identified ourselves, we received a radio communication from the *Nisshin Maru*. The transmission began by the caller stating in English, "*Arctic Sunrise* this is *Nisshin Maru*", then continued after we had acknowledged the transmission as follows:

"This is Hajime Ishikawa, head of the Southern Ocean Survey Fleet. We are conducting scientific research as allowed under Article VIII of the *International Convention on the Regulation of Whaling* and strongly demand that you, Greenpeace, should cease your obstruction of a permitted survey and leave the survey area immediately. ..."
9. Our Japanese crew member, Yuko Hirono, replied on my behalf, which began by stating in English:

"This is Kieran Mulvaney, expedition leader on board the MV *Arctic Sunrise*. I thank you for your earlier transmission. It is a pleasure to have contact with you. ..."

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10. Yuko Hirono went on to politely request on my behalf that the fleet cease whaling and return to Japan or that, in the alternative, we would continue to exercise our right to peaceful protest.
11. Following this communication the fleet continued on its course but poor weather prevented any whaling activity on that day.
12. On 15 December 2001 the weather conditions began to improve and the fleet began whaling, although the ice conditions were thick and very difficult.
13. We launched two inflatable vessels, the *Hurricane* and the *Mermaid*, to attempt to prevent any whales being killed. The *Mermaid* chased a catcher, the *Kyo Maru No. 1*, and prevented it from killing an Antarctic minke whale by placing itself between the Japanese catcher and the whale. At the time the whale was about 15 meters in front of the catcher and the harpooner stood at the bow and was lining up his shot when the *Mermaid* raced between the catcher and the whale preventing the shot. The whale dove beneath drifting ice and escaped.
14. On the morning of 16 December 2001 the fleet located a polynya (i.e. a large expanse of open water in the middle of fast ice or pack ice, and a haven for whales) at Latitude 63° 0'6" South, Longitude 051° 32'7" East, approximately 40 nautical miles within the Australian Whale Sanctuary.
15. The respondent's fleet began whaling activity in the polynya while the *Arctic Sunrise* was delayed by thick ice and unable to prevent the whaling occurring.
16. I observed through binoculars several whales killed by the respondent's vessels in the polynya while the *Arctic Sunrise* was delayed by thick ice. My journal records two specific instances of Antarctic minke whales I could see being transferred to the *Nisshin Maru* while we were labouring through the ice. My recollection is that there were several more whales killed during that time but I cannot recollect the exact number.
17. Finally, after several hours, we broke through into the polynya, emerging close to the *Nisshin Maru*, with two of the catchers—the *Yushin Maru* and the *Toshi Maru No. 25*—nearby.
18. I observed the *Toshi Maru No. 25* head to the *Nissin Maru* and deliver a killed Antarctic minke whale.
19. The *Kyo Maru No. 1* then headed to the *Nissin Maru* to deliver a killed Antarctic minke whale. By this time our two inflatables were in position to attempt to disrupt the transfer of the whale. The crew of the *Nissin Maru* lowered ropes and flags into the water to attempt to snag the inflatables propellers and used large water cannons to inundate the inflatables with water. The whale was eventually transferred to the *Nissin Maru* after a delay of a quarter of an hour.

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20. As our inflatables headed back to change crews, our helicopter, which had been filming the action, headed off in search of a catcher. It located the *Yushin Maru* hunting an Antarctic minke whale. I have observed the film taken and have been told by the crew of the helicopter, Phil Robinson (pilot), Jari Stahl (cameraman) and Jeremy Sutton-Hibbert (photographer), that the gunner took aim and fired but missed the whale. The *Yushin Maru* continued its chase for 40 minutes and fired six times but missed on each occasion. Finally, on the seventh attempt the harpoon found its mark and the whale was killed, hauled to the surface and tied alongside the catcher.
21. We did not observe further whaling on that day.
22. I have been shown a copy of Figure 7 (Sighted positions of sampled Antarctic minke whales by sex and reproductive status in 2001/2002 JARPA) from 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**”), which is exhibit NJB-3 to the affidavit of Nicola Jane Beynon (18 October 2004). The symbols of approximately 6 sighted Antarctic minke whales shown at Latitude 60° South, Longitude 51° East, correspond with the killing of whales that I witnessed in the polynya on 16 December 2001.
23. The next day, 17 December 2001, the whaling by the respondent’s fleet continued, beginning from Latitude 63° 40’ South, Longitude 054° 00’ East, approximately 45 nautical miles within the Australian Whale Sanctuary.
24. We launched 4 inflatables as the *Kyo Maru No. 1* approached the *Nisshin Maru* to unload a killed whale but we were unable to prevent the transfer.
25. The *Kyo Maru No. 1* then broke away from the *Nisshin Maru*. We pursued it but were unable to prevent it killing another Antarctic minke whale.
26. With reference to Figure 7 of the 2001/2002 Cruise Report exhibited as NJB-3 to the affidavit of Nicola Jane Beynon (18 October 2004), the symbols of approximately 3 sighted Antarctic minke whales shown at Latitude 63° South, Longitude 55° East, correspond with the killing of whales that I witnessed on 17 December 2001.
27. Commencing on 18 December and continuing until 21 December 2001, high winds and heavy snowstorms prevented the fleet from whaling.
28. On 21 December 2001 the respondent’s fleet recommenced whaling at Latitude 63° 26’2” South, Longitude 063° 09’9” East, approximately 5 nautical miles outside of the Australian Whale Sanctuary.
29. The *Kyo Maru No. 1* killed an Antarctic minke whale and we observed it return to the *Nisshin Maru* to deliver the whale, which had its tail flukes ripped off. We were unable to prevent the delivery to the *Nisshin Maru*.

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30. The *Kyo Maru No. 1* then moved off and killed another whale as we retrieved one of our inflatables that had a damaged propeller.
31. With reference to Figure 7 of the 2001/2002 Cruise Report exhibited as NJB-3 to the affidavit of Nicola Jane Beynon (18 October 2004), the symbols of approximately 6 sighted Antarctic minke whales shown at Latitude 63° South, Longitude 64° East, correspond with the location of the whaling that I witnessed on 21 December 2001.
32. After 21 December 2001 we lost contact with the respondent’s whaling fleet, but located the *Kyoshin Maru No. 2* in the evening of December 22.
33. We were unable to locate the respondent’s whaling fleet until alerted to their location by an encounter on 31 December 2001 between the fleet and the Australian government resupply and research ship, the *MV Aurora Australis*.
34. Thanks to the encounter we were able to locate the whaling fleet around midnight on 3 January 2002 at Latitude 62° 35’6” South, Longitude 085° 59’8” East, approximately 20 nautical miles outside of the Australian Whale Sanctuary.
35. On 5 January 2002 at Latitude 60° 51’8” South, Longitude 087° 59’4” East, approximately 100 nautical miles outside of the Australian Whale Sanctuary, we observed two killed whales being transferred to the *Nisshin Maru*.
36. With reference to Figure 7 of the 2001/2002 Cruise Report exhibited as NJB-3 to the affidavit of Nicola Jane Beynon (18 October 2004), the symbols of 2 sighted Antarctic minke whales (a mature male and an immature female) shown at Latitude 61° South, Longitude 87° East, correspond with the killing of whales that I witnessed on 5 January 2002.
37. On 6 January 2002 I determined that it was necessary for the *Arctic Sunrise* to return to Melbourne, Australia, for resupply and we left the respondent’s whaling fleet. Other than one brief encounter with the *Kyoshin Maru No.2* as we left the area, we had no further contact with the fleet that year.
38. Attached to this affidavit and marked “**KPM-1**” are 6 photographs of the respondent’s whaling activity described in the proceeding paragraphs of this affidavit. The photographs were taken by Jeremy Sutton-Hibbert but I observed the events shown from aboard the *Arctic Sunrise* and the photographs are correct and have not been altered in any way. All of the whales shown in the pictures are Antarctic minke whales. A brief description of the events shown in each of the photographs is as follows:
 - (a) Photograph 1 shows a harpoon being fired from the *Yushin Maru* at an Antarctic minke whale on 16 December 2001, approximately 40 nautical miles within the Australian Whale Sanctuary, as described in paragraph 20 of this affidavit.

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- (b) Photograph 2 shows the Antarctic minke whale killed by the *Yushin Maru* on 16 December 2001, approximately 40 nautical miles within the Australian Whale Sanctuary, as described in paragraph 20 of this affidavit.
- (c) Photograph 3 shows one of our inflatables being sprayed with water cannons by the crew of a catcher and a dead Antarctic minke whale secured to the side of the catcher.
- (d) Photograph 4 shows a dead Antarctic minke whale being pulled up the stern of the *Nisshin Maru* factory ship after being transferred from a catcher.
- (e) Photograph 5 shows a dead Antarctic minke whale awaiting processing aboard the *Nisshin Maru*. The crew are holding a sign that says, "We're measuring body proportion", which I understand to have been intended by the crew to affect the public relations value of our photographs.
- (f) Photograph 6 shows an Antarctic minke whale being processed aboard the *Nisshin Maru*.

39. Finally, I note that my understanding and belief is that the respondent is the primary entity responsible for carrying out the whaling referred to above and selling the whale meat and other products obtained from the whaling in Japan. Other organisations, including the Institute of Cetacean Research and several Japanese universities as well as the Government of Japan, are involved in the planning, conduct and financing of the whaling. This understanding and belief is based upon many years of involvement in the anti-whaling campaign but I note as one particular reference the following extracts from Toshio Kojima, "Whaling Issues and Japan's Whale Research" (Institute of Cetacean Research, 1993), which I obtained on the internet at http://luna.pos.to/whale/icr_wijwr_jrw.html (viewed 1 November 2004) describing the 1991/1992 JARPA:

"In 1987 the Institute of Cetacean Research was founded as a non-profit organization to conduct research under the supervision of the Fisheries Agency of the Ministry of Agriculture, Forestry and Fisheries. The same year Kyodo Hoge, a whaling company, was dissolved and reformed into Kyodo Senpaku, a leasing company of the mother ship and catchers as well as their crews. ... A total of 158 people were on board the four vessels"

40. My understanding and belief is that the respondent continues to own the five vessels now used in the whaling and to employ the crew of those vessels.

Affirmed by)	
KIERAN PAUL MULVANEY)	
at)	this
9 th day of November 2004)	
before me:) Deponent

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Justice of the Peace / Notary public / Lawyer

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

No. NSD 1519 of 2004

HUMANE SOCIETY INTERNATIONAL INC

Applicant

KYODO SENPAKU KAISHA LTD

Respondent

EXHIBIT KPM-1 TO THE AFFIDAVIT OF KIERAN PAUL MULVANEY

This and the following 6 pages is the exhibit marked “**KPM-1**” to the affidavit of Kieran Paul Mulvaney affirmed before me on 9 November 2004.

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