

BETWEEN: **HUMANE SOCIETY INTERNATIONAL INC**

Applicant

AND: **KYODO SENPAKU KAISHA LTD**

Respondent

AFFIDAVIT OF NICOLA JANE BEYNON
(Order 14, rule 2)

On 27 October 2006, 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. This affidavit builds upon, and should be read in light of, the facts set out in my earlier affidavits in these proceedings of 18 October 2004, 8 November 2004 and 29 July 2005.

Evidence of 2005/2006 whaling in the Australian Whale Sanctuary

2. In June 2006, as the representative of the applicant and part of the delegation of the Australian Government, I attended the 58th annual meeting of the International Whaling Commission (“IWC”) at St Kitts and Nevis.
3. Annexed to this affidavit and marked “**NJB-17**” is the *Cruise Report of the Second Phase of the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA II) in 2005/2006 – Feasibility Study* (“**the 2005/2006 Cruise Report**”), submitted by the Government of Japan to the IWC meeting in 2006. The IWC provided me with an electronic copy of this report shortly after the meeting.
4. Table 9 and Table 11 on pages 16 and 17, respectively, were obscured in the electronic copy of the 2005/2006 Cruise Report provided to me by the IWC. The IWC subsequently sent me copies of the originals of those pages by facsimile. Annexed to this affidavit and marked “**NJB-18**” is a copy of the facsimile I received from the IWC.

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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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- 5. The 2005/2006 Cruise Report states that a total of 853 minke whales and 10 fin whales were “sampled”. As in previous cruise reports annexed to my earlier affidavits, the word “sampled” is used as a euphemism for “killed”. The report describes the sampling method as follows (at page 3):

“One or two Antarctic minke whales was sampled randomly from each primary sighted school within 3 [nautical] miles of the track line. The dwarf form minke were not a target for sampling. Sampling of fin whales was restricted to an estimated body length less than 20m, because of limitation of the research base ship (NM) facility for dissection.”

- 6. The 2005/2006 Cruise Report has changed the method of presenting the location of whaling from previous cruise reports. Previous cruise reports showed the location of the whales “sighted” separate to diagrams depicting the location of the whales “sampled”. The maps in the 2005/2006 Cruise Report do not expressly show the locations of “sampled” whales. The maps are also less detailed than previous cruise reports and do not include latitudes and longitudes, which were included in maps in previous cruise reports.
- 7. While the information concerning the location of whaling that is presented in the 2005/2006 Cruise Report is less detailed than for previous cruise reports, there is sufficient information to estimate the number of whales killed in the Australian Whale Sanctuary (“AWS”).
- 8. Figure 7 of the 2005/2006 Cruise Report shows the location of the Antarctic minke whale whales sighted by Sighting and Sampling Vessels (“SSVs”). Figure 11 shows the locations of the fin whales sighted by SSVs. Figure 6 and Figure 10 show the location of all sightings of minke and fin whales by Sighting Vessels (“SVs”). SVs are not fitted with harpoons and only observe the location of whales. SSVs are fitted with harpoons and actually carry out the whaling. Therefore, Figure 6 and Figure 10 can be ignored for the purpose of establishing the location of whaling as SVs do not kill whales.
- 9. Assuming an even ratio of whales killed with whales sighted by SSVs, noting the whalers’ stated methodology to kill one or two whales within each school targeted, Figure 7 and Figure 11 can be used to infer the location of whaling in 2005/2006.
- 10. Figure 7 and Figure 11 do not give latitudes and longitudes but the outline of the Antarctic coastline allows the boundary of the AWS to be overlaid onto the map. The large peninsula on the left of Figure 7 and Figure 11 is a key feature. The peninsula looks like a large “mushroom head” on the left-hand end of Figure 7 and Figure 11. Comparing this feature with the boundary of the AWS in the map shown in exhibit NJB-7 of my affidavit of 18 October 2004, the boundary of the AWS is located seaward of the edge of the peninsula a distance that is approximately 2.5 times the size of the “mushroom head” of the peninsula. The boundary of the AWS is, therefore, approximately equivalent to the dotted line in Figure 7 and Figure 11. The AWS also extends for the entire length of Figures 7

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and 11, with a small break for the French Adelle Land, which is approximately above the letters “ighte” in the word “sighted” in the title of Figure 7.

11. Annexed to this affidavit and marked “**NJB-19**” is an extract of the 2005/2006 Cruise Report showing the boundary of the AWS overlaid on Figure 7 and Figure 11.
12. Figure 7 and Figure 11 are not clear enough to count individual whales killed as was possible from previous cruise reports. However, by estimating the percentage of whales killed within the AWS and knowing the total number of whales killed in 2005/2006 (853 Antarctic minke whales and 10 fin whales) the approximate number of whales killed within the AWS can be calculated.
13. In this manner I calculate that approximately 90% of all whales killed in the 2005/2006 whaling season were killed within the AWS, which amounts to approximately 768 Antarctic minke whales and 9 fin whales.
14. The following table summarises my estimates of the whales killed in the AWS in JARPA I and JARPA II each year since the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) came into effect on 16 July 2000. The details of whaling in years prior to 2005/2006 were provided in my earlier affidavits.

Table 3: Summary of the number of Antarctic minke whales and fin whales killed generally under the JARPA I and JARPA II and the approximate number killed specifically within the AWS

YEAR	Total of Antarctic minke whales killed under the JARPA and JARPA II	Approximate number of Antarctic minke whales killed within the AWS	Total of fin whales killed under the JARPA and JARPA II	Approximate number of fin whales killed within the AWS
2000/2001	440	65	0	0
2001/2002	440	215	0	0
2002/2003	440	21	0	0
2003/2004	440	164	0	0
2004/2005	440	20	0	0
2005/2006	853	768	10	9
TOTAL	<u>3,053</u>	<u>1,253</u>	<u>10</u>	<u>9</u>

15. The 2005/2006 Cruise Report indicates that pregnant and lactating female whales were killed, so the total number of whales killed is likely to be higher than the estimates in Table 3. A high percentage of females killed were reported to be pregnant. Of the 391 female Antarctic minke whales reported (in Table 9, page

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16) to have been killed in 2005/2006, 224 (57%) were reported to be pregnant and 3 (0.7%) were reported to be lactating. The report notes (at page 7) that the “pregnancy rate in mature females was 93.8% (227 individuals) in the whole research areas and two twins were observed.” Killing a pregnant female obviously kills her unborn foetus. Killing a lactating mother is very likely to result in the suckling young whale dying of starvation.

16. The 2005/2006 Cruise Report also notes (at page 7) that three Antarctic minke whales were “struck and lost”, which means the whales were hit by the harpoon but not captured. As the harpoons are fitted with explosive heads, it is highly likely that these three whales also died after being struck by the harpoon.

17. In relation to the processing of the whales after capture, the 2005/2006 Cruise Report notes (at page 8) that:

“All the whales collected were processed on [the *Nisshin Maru*] after biological sampling was completed, according to the provisions of Article VIII of the [Whaling] Convention. A total of 3441.4 tons (268.9 tons of fin and 3171.5 tons of Antarctic minke whales) of meat, blubber, viscera, etc. was produced.”

18. The 2005/2006 Cruise Report explains (at pages 4, 5 and 19) that ships from Greenpeace and the Sea Shepherd Conservation Society were present for part of the hunt causing obstructions. This may have led to the actual number of Antarctic minke whales killed being lower than the target of 935 minke whales.

Entry of whaling vessels into Australian mainland waters

19. There appear to be occasions when the vessels associated with the respondent’s whaling activities may enter into Australian mainland waters.

20. According to news reports, a selection of which are appended to this affidavit and marked “NJB-20”, last summer, during the 2005/2006 whaling season, a vessel that was part of the respondent’s whaling fleet entered Australian mainland waters for a medical evacuation. The news reports state the vessel *Kaiko Maru* attempted to dock in Hobart to medically evacuate a sick crew member on 23 December 2005. The vessel did not physically dock in Hobart. The sick crewman was air-lifted into a helicopter at sea, approximately 50 nautical miles off Tasman Island in the south eastern waters off Tasmania, within Australia’s Exclusive Economic Zone. The crew member was then flown by helicopter to Hobart where he was treated for appendicitis. The vessel then returned to sea and the evacuated crew member was to return to Japan once recuperated.

21. The vessel *Kaiko Maru* does not appear to be owned by the respondent. On 25 October 2005 I caused a search to be conducted of the website of the Japanese ship classification society, Nippon Kaiji Kyokai, at www.classnk.or.jp, for vessels named “Kaiko Maru”. The website indicated that five vessels have this name: *Kaiko Maru*; *Kaiko Maru (No 2)*; *Kaiko Maru (No 5)*; *Kaiko Maru (No 7)*; and *Kaiko Maru (No 30)*. None of these vessels was shown as registered to the respondent. Annexed to this affidavit and marked “NJB-21” is a copy of the registration details obtained for the vessel *Kaiko Maru*. The registered owner is

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shown as Showa Yusosen Co Ltd. I am able to provide the registration details of the four other vessels bearing the name *Kaiko Maru* should the Court request it.

- 22. I note the 2005/2006 Cruise Report does not list a vessel named *Kaiko Maru* as part of the whaling fleet but does list the *Kaikoh Maru No 1*. A search was also conducted for “Kaikoh Maru” but no ship was listed under this name.

Evidence of future whaling in the Australian Whale Sanctuary

- 23. The Government of Japan did not present a new research plan for the 2006/2007 whaling season to the 2006 IWC meeting. Instead it re-submitted the research plan for JARPA II that was submitted at the 2005 IWC meeting. This research plan was annexure NJB-15 to my affidavit of 29 July 2006. As an aside in relation to this affidavit, I note that the references to annexures NJB-13, NJB-14 and NJB-15 in paragraphs 13, 15 and 26, should refer to annexures NJB-14, NJB-15 and NJB-16 respectively. The index and certificates of exhibit / annexure have the correct references.
- 24. The research plan for JARPA II proposes a biennial research pattern alternating between two broad areas adjacent to Antarctica. This is similar to the research pattern for JARPA I and should result in only a small percentage of the total whales killed in the 2006/2007 whaling season being killed within the AWS. Assuming that the cruise line followed under JARPA II is similar to the cruise line followed under JARPA I, based on previous cruise reports the whaling that is proposed to occur within the AWS in 2006/2007 is likely to occur from late February until early March 2007.
- 25. The research plan for JARPA II states (at page 13) the research period will be six years, including two years of a “feasibility study”, after which a review will be held and revisions made to the program if required. After the two year “feasibility study”, commencing in the 2007/2008 whaling season, the number of whales killed will be increased to 850 ± 10% Antarctic minke whales, 50 fin whales and 50 humpback whales. Based on the proportion of whales killed in the AWS in previous years summarised in Table 3, in 2006/2007 and every second year thereafter the number of whales killed in the AWS will be probably less than 15% of the total whales killed. In 2007/2008 and every second year thereafter, approximately 40-90% of the whales will be killed in the AWS.

Affirmed by)
 NICOLA JANE BEYNON)
 at Sydney this)
 27th day of October 2006)
 before me: Deponent

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Justice of the Peace / Solicitor