



End of the line: A Minke whale and her 1-year-old calf are hauled aboard the Nisshin Maru, the world's only whale-factory ship, in the Southern Ocean in February 2008. In this case, Japan's 'legal research' advertised on the ship's stern left a large wound from an explosive harpoon in the calf's belly. | AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

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In science terms, Japan has no need *at all* to kill whales

BY [ROWAN HOOPER](#)

[ARTICLE HISTORY](#) | AUG 10, 2013

Final arguments from the defence and prosecution were heard in mid-July, and the world court is now considering its judgment. At issue is Japan's right to conduct its seasonal "scientific" whaling program in Antarctic waters. But the case has involved arguments about how to define science itself.

The legal challenge to Japan has been brought to the International Court of Justice (ICJ) in the Hague by Australia, which has asked the Netherlands-based court to find that Japan's whaling program is illegal because it is actually commercial whaling — not scientific research that is permissible under the 1982 moratorium on commercial whaling declared by the International Whaling Commission (IWC), which went into effect in the 1985/86 coastal and pelagic hunting seasons.

On June 1, 2010, Australia initiated proceedings at the ICJ against Japan, alleging breach of international obligations concerning whaling.

Japan contends that Australia has embarked on an “alarmist crusade” against whaling.

The stakes are high. Political relations between Japan and Australia have been strained during the trial, with Japan accusing Australia of “an affront to the dignity of a nation” in bringing charges of lying about its whaling program.

But in the Southern Ocean the stakes for thousands of Minke whales, in particular, are higher. If Japan wins the case — and some commentators suggest it is in a strong position — the legal status of its whaling program could be strengthened.

Masayuki Komatsu, Japan's chief whaling negotiator from 1999 to 2004, told The Australian newspaper that the international court could rule that Japan's “scientific” whaling program — which many countries as well as Australia believe is a masquerade for a commercial whaling operation — is legitimate.

The worst-case scenario, for opponents of whaling, is that the court overturns the IWC's 1985/86 moratorium on commercial whaling, known as Article 10E in the International Convention for the Regulation of Whaling. That outcome would be disastrous for whales worldwide — and it is precisely why the legal challenge to Japan, which at first glance many people opposed to whaling would probably support, is highly risky.

Komatsu told the Sydney-based The Australian newspaper that he had been privately told by United States government sources that it was unfortunate Australia had brought the case.

“Even your government's bureaucrats were not enthusiastic about bringing this case to the ICJ because, in the most negative case, Article 10E of the schedule may be negated,” he said.

Japan's legal team in the Hague also feels that the law is on its side. Noriyuki Shikata, a spokesman for the Japanese delegation, was critical about Australia's legal arguments in court. In the closing submissions last month, Shikata said: “We have not really heard effective legal rebuttal based on evidence and reasoning and we have an impression that many of the allegations are driven by emotions, not science.”

Several international legal experts gave evidence for Japan.

Allan Boyle, a professor of public international law at the University of Edinburgh, made the claim that if Japan's current whaling program was not scientific, then neither were the research activities of numerous institutions worldwide that use fisheries data to assess sustainable catch levels.

Another British legal expert, Vaughn Lowe, an emeritus law professor from the University of Oxford, said that "there is no uniquely correct formula" for what qualifies as scientific research. He said Japan's view of its whaling program was that it is "an absurd exaggeration to say that it is not scientific research at all."

Let's look at what we know about what Japan has learned from its whaling program.

Its stated objective is that it needs to kill whales in order to understand the feeding ecology and population makeup of various whale species. It needs to understand this, it says, so it can "manage" whale numbers through hunting.

Now, it is true that by catching and killing whales, and analyzing their stomach contents, a lot can be learned about cetacean biology. In the past, it was the only real method available to investigate these animals. But for many years now, it has been entirely unnecessary to kill whales in order to get the information that Japan's Institute for Cetacean Research says it needs.

That institute, by the way, operates under the auspices of the Japan Fisheries Agency, a division of the Ministry of Agriculture, Forestry and Fisheries, which issues annual catch quotas.

In line with those quotas, between 1988 through the first half of 2011, 13,663 whales were caught under Japan's moratorium exemption for scientific research. Of those, 3,573 whales were taken in the North Pacific Ocean and 10,090 in the Southern Ocean, including from a large area designated by the IWC in 1994 as the Southern Ocean Whale Sanctuary.

But it's better to collect poop than to kill whales. Collecting their feces may not be the most pleasant job in the world, but analyzing the DNA found in great dollops of whale poop floating in the open sea can tell scientists — without cutting open its stomach — what animals a whale has been eating.

Meanwhile, DNA samples can be taken with relative ease from these mighty marine mammals by removing a small plug of skin from them. And a lot can be learned from their nasal mucus (snot).

Researchers can sample a whale's breath — including its snot — by catching the gunk that spurts from its blowhole. (If you can't imagine how you could possibly get close enough to a whale's nose to do this, think creatively: Karina Acevedo-Whitehouse, of the Zoological Society of London, flies remote-controlled helicopters over breaching whales, catching flying snot on Petri dishes strapped to the sides of the choppers.)

From these samples, scientists can determine the viruses, fungi and bacteria that live in whales'

lungs.

Killing whales provides negligible data to science. Less than 1 percent of the papers published on cetacean biology come from studies that required the killing of a whale.

In fact, tagging live whales tells you far more. GPS tags allow biologists to track whales and learn migration routes as well as daily routines. And acoustic tags record marine noise, so we can get an aural picture of the undersea soundscape — and an idea of the amount of noise pollution from boats that whales are having to tolerate.

So despite what the legal experts — not biologists — may argue, Japan’s claims that it requires lethal whaling to conduct scientific research just do not stand up.

The worry is that the ICJ will only be able to rule on the legal arguments, which may favor Japan.

It may be true that Australia’s case has in part been driven by emotions, as Shikata says. But Japan’s case is driven by national pride.

In summing up the legal case for Japan, Deputy Minister for Foreign Affairs Koji Tsuruoka said: “We have been able to present to the world the truth about Japanese scientific whaling.”

Unfortunately, this just did not happen.

Now the court must decide what to do. There is a lot of information to process, and the ruling won’t come for four to six months.

Rowan Hooper PhD (@rowhoop on Twitter) is the News Editor of New Scientist magazine. The second volume of Natural Selections columns translated into Japanese is published by Shinchosha at ¥1,500. The title is “Hito wa Ima mo Shinka Shiteru (The Evolving Human).”

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