

Merit Procedure Hearing of Morgan's  
Court Case Which Took Place at the  
Amsterdam District Courts on Thursday 1<sup>st</sup>  
November 2012.



0901 Just about to go into the court room.

0920 The Judge is not proud of how long it took to get Morgan's case back in court – there are three Judges (one male, two females) but only one (the male) is doing the talking.

0920 Jeff Foster is brought in as expert witness for Morgan - he has worked both sides of fence (with orca in captivity and the wild) and has rehabilitated three orca.

0922 Jeff Foster visited Loro Parque to see Morgan this week.

The court room is full - Judge says this justifies we spend time on Morgan's case.

0931 Morgan's lawyer (the Orca Coalition's lawyer) says it is important a decision is made in the shortest time possible as time is working against Morgan.

0935 Judge says we want to learn from Morgan's case - should we do things differently in future?

0940 Judge repeats what Morgan's lawyer says. Morgan's lawyer doesn't know why Dolfinarium Harderwijk are here – he says, "your part is over."

But Judge will allow Dolfinarium Harderwijk to speak as the Judges want to be as informed as possible to make the right decision for Morgan.

Dolfinarium Harderwijk want to confirm that they acted "correctly" for Morgan – that is why they are here and why they feel they are still relevant to Morgan's case.

0944 The Judge asks if the reason Dolfinarium Harderwijk are present is because their reputation is at stake.

0944 The Dolfinarium Harderwijk no longer have a rehabilitation permit - it has been given to a different organisation (not an aquarium).

The Judge notes there are a lot of supporters for freeing Morgan in the court room.

0947 Morgan fell into the hands of conners says Morgan's lawyer, and having Morgan's right established will contribute to helping other orca. A wild orca belongs in the wild, he goes on to say.

The Free Morgan Foundation represents Morgan's best interests and will continue to do so no matter what the outcome of the hearing.

*Observation - Dolfinarium Harderwijk seem to be here to defend their reputation, not Morgan.*

*Observation - the amusement parks don't want to be filmed and Dolfinarium Harderwijk have signed an agreement with the Dutch Ministry to prevent this.*



0954 Dolfinarium Harderwijk say if previous decision is upheld they know they made the right decision... is this about Morgan or reputation?

0955 Director of Harderwijk claims they acted correctly - "Morgan is happy and healthy right now"

0956 Director of Harderwijk claims that they put Morgan's well-being first.

0957 "I went to Tenerife and Morgan is doing well" says Harderwijk director. This contradicts what Free Morgan Foundation orca experts observed when they visited Morgan independently.

"One party has commercial interest" says Morgan's lawyer.

1009 During a visit to Harderwijk, when invited for a tour of the facility, the Orca Coalition was separated from the State Secretary. This made it very difficult to speak about Morgan.

1010 In out-of-court decisions Loro Parque was considered as the only option for Morgan by Dolfinarium Harderwijk and Loro Parque – they did not talk about rehabilitating Morgan as an option.

A statement made by Henk Bleker, State Secretary for Economic Affairs, Agriculture and Innovation (Dutch MP) more than a year ago is mentioned in court "We must have the guts to kill Morgan."

The Judge says, "If you work with live animals, the well-being comes first. Simple."

1021 The Dolfinarium Harderwijk defend their decision with Morgan by saying the world is wild, there is suffering & sometimes animals die.

1024 Dolfinarium Harderwijk compares Morgan to a hedgehog – rescuing Morgan is like rescuing a hedgehog or a rabbit. They are claiming it is the same process.

1105 The decision by the Dutch court will be taken seriously by the Spanish court.

1107 The transport permit should never have been granted says Morgan's lawyer.

1140 Expert witness Jeff Foster takes the floor.

*Jeff Foster is asked questions by the Judge.*

- Jeff has worked on the rehab of orca Keiko, orca Springer, as well as bottlenose dolphins Tom & Misha (Tom & Misha were released this year and are currently thriving in the wild) and 5 pilot whales from Florida.
- "I still think it was a success..." Jeff refers to Keiko's release, the first ever attempt.
- Keiko was in captivity almost 20 years. He re-learned to hunt and feed on live fish. He had 100+ encounters with wild orca and often spent his time in close proximity to them.
- Springer was a similar age to Morgan and also spent time in captivity. She was rehabilitated and released and has successfully reintegrated with a closely related family pod. She has been re-sighted regularly since her release, including this year which is 10 years after she was released back into the wild.
- "I think she's (Morgan's) an excellent candidate (for rehab and release)," Jeff Foster.
- "But every day she's in captivity, her chances decrease," Jeff Foster.
- Morgan still has memory of the wild and we can rely on that memory to condition her for release - Jeff Foster.

- The fact Morgan is young and female means she is more likely to be accepted into a pod.
- Jeff Foster visited Morgan 29/10 and saw her in 2/3 shows. Loro Parque has a dysfunctional group of orca. Morgan is isolated from the group.
- There are obvious aggression problems at Loro Parque with the other orca and Morgan - Jeff Foster.
- "The first thing I noticed she (Morgan) seemed to be in kind of a stressful situation," Jeff Foster.
- "When I watched her, Morgan isolated herself from the other animals." Jeff Foster.
- It is not normal to have rakes to the extent that Morgan has - Jeff Foster.
- Typically one dozen rake marks on an orca - Morgan has hundreds.
- 25-50% of Morgan's rake marks are fresh, within the last 6-8 weeks.
- Morgan spends a lot of time underwater, which is encouraging. Typically in captivity, orca spend most of their time logging at the surface.
- The most difficult thing to teach an orca is to change their focus from above water to underwater - all contact in captivity is above water (feeding, training, trainer interactions etc).
- Morgan still has wild traits - this is encouraging!
- The trainers at Loro Parque were observed to only interact with the orca during shows. After shows, the orca are ignored. There was little in the way of secondary reinforcements.
- In her favour for release Morgan has her age, observed wild behaviours that she displays still and the short length of time she has been in captivity.
- It would be beneficial to create a full ethogram of Morgan's daily behaviours, to observe her outside of a show setting, says Jeff Foster. But this would be difficult without the cooperation of Loro Parque.
- Animals Like Morgan can be conditioned to hunt and eat live fish - we have already been doing that successfully with Keiko, Springer, Tom & Misha.
- "I think Morgan still has memories of eating live fish and this will help us to condition her to do this," - Jeff Foster.
- It is key to integrate Morgan into a wild group but she will still do OK on her own as a solitary / satellite animal (satellite animal being an animal who moves between pods) – Jeff Foster.
- "I can guarantee one thing - that Morgan will not live a long or happy life in the situation she's in right now," Jeff Foster.
- "I'm not pro-captivity, I'm not anti-captivity. I'm here for Morgan." Jeff Foster
- In captive situations orca vocalise less due to the affect that the concrete tank walls has on their acoustics and due to the fact that the orca are always in close proximity to each other – compared to the ocean it is a very quiet environment. Orca lose some communication behaviours in captivity which leads to a lack of mental stimulation.
- "When I came I had no agenda. I came to observe Morgan and see if he was a possible candidate (for release). And I believe she is." Jeff Foster

Morgan's lawyer explains that Loro Parque have a commercial interest in Morgan - 70% of SeaWorld's turnover is generated by orca. SeaWorld own the other orca displayed at Loro Parque. Scientific research is just a pretence.

1350 Discussing why holding Morgan for scientific research for conservation of the species is invalid - research in captivity only serves zoos. Results cannot be applied to wild orca in a wild setting when research is conducted in an artificial environment that does not resemble the natural habitat in any way, shape or form.

Studying Morgan in a sea-pen as part of a rehabilitation plan would be far more beneficial than studying her in a small tank in a captive facility.

Dr. Ingrid Visser's latest report shows how Morgan has 320+ rakes and bites from other Loro Parque orca & injuries she inflicts upon herself.

Morgan is bored - she is chewing on the tank concrete, grinding down her teeth, says Dr. Visser whilst showing photographic evidence.

30%+ time Morgan stayed in the medical tank of Loro Parque which is smaller than the tank of Dolfinarium Harderwijk, observed Dr. Visser during her time visiting Morgan.

Morgan is hungry for contact with the general public which shows how desperate she is for social interaction – she is experiencing a lack of attention and interaction from Loro Parque trainers. Both Jeff Foster and Dr. Visser observed this during the times they visited Morgan.

Dolfinarium Harderwijk's 7 experts from 2010 - 2 study birds (not cetaceans!), 2 work for the captive industry (biased?), 3 are orca experts & all were given an incomplete report about Morgan before the last hearing. The 3 experts have all changed their mind since and now think Morgan is a good release candidate.

Original report (Dec 2010) by Dolfinarium Harderwijk was incomplete – information was withheld from experts - 3/7 of their experts are real experts – these 3 all changed mind.

The worldwide orca community - the majority (if not all) are in favour of releasing Morgan. They have written statements affirming this.

1425 - Dr. Ingrid Visser, orca biologist and Free Morgan Foundation expert, takes the floor

*Dr. Visser gives a presentation with a slideshow of information and photographs, talking us through what it all means.*

- "I'm here as a scientist and I'd like to present some facts," Dr. Visser.
- Firstly, Morgan is being advertised commercially and is being used in shows to make money for the amusement facility.
- The aggression from other orca toward Morgan still continues. In the last 4 months, Morgan has received 300 more rake marks.
- Rake marks on orca aren't abnormal but the NUMBER of rake marks on Morgan are. This is affirmed by Jeff Foster and Dr. Visser.
- Trainers don't have enough experience with orca to recognise their behaviours. What they think is "play" behaviour is actually aggression.
- Trainer neglect - Morgan attempts to interact with trainers but she just gets ignored. Trainers interact with other orca, like 2 year old orca Aidan. This was observed by Dr. Visser during the multiple times she visited Morgan at Loro Parque.
- Morgan exhibits stereotypic (abnormal repetitive) behaviours like chewing concrete and violently bashing her rostrum against the sides of the concrete tanks.
- For every hour Dr. Visser observed her, Morgan chewed on concrete at least 5 times. Morgan has lost nearly 1/3 of the tops of her teeth in only 19 weeks.
- Morgan has hypotrophic damage which is getting worse – it is swelling and becoming itchy and irritating and so Morgan is bashing more because of it.
- Blue paint residue on Morgan's teeth indicates she is chewing concrete below water as well as above water.

1435 Dolfinarium Harderwijk maintain their claim that they have acted correctly and within the law with regards to Morgan.

1440 Dolfinarium Harderwijk say it is none of the Dutch court's business how Morgan is doing - that the issue should be taken up with Spanish government.

1445 Judge says maybe the parks' need to look at the whole situation rather than assessing the situation mechanically.

1452 Dolfinarium Harderwijk make their plea - they say "Can Morgan be released into the wild" is an irrelevant question from a legal point of view.

1453 Head of Research at Loro Parque, Javia Almunia, takes the floor.

*Javier Almunia is asked questions by the Judge.*

- Almunia contradicts all observations made by Free Morgan Foundation experts.
- Almunia claims Morgan has integrated with the orca group at Loro Parque & spends time with them. That Morgan's behaviour can be considered normal.
- Almunia claims Morgan's emotions are the same as those of other orca in captivity AND in the wild!
- Almunia claims Morgan's health can be considered "normal" and goes on to say how Morgan "receives the best husbandry and veterinary care".
- Almunia has doubts about Morgan's hearing abilities – he says this will be checked by team of experts next week.
- Almunia says they try to fight stereotypic behaviours with enrichment, like secondary reinforcements - Jeff Foster didn't observe this during his time visiting Morgan at Loro Parque.

1500 Dolfinarium Harderwijk submit photos of wild orca with rake marks but don't give details of age of orca, sex of orca or year photos were taken. The photos are in black and white, no colour.

- The Judge asks Almunia about Morgan's teeth, chewing concrete and the blue paint residue - Almunia admits this is a common problem in captive orca.
- The Judge questions why Loro Parque first mentioned Morgan's possible hearing defect a year ago but they aren't testing her until next week.
- The Judge wants to know more about Morgan's possible hearing problem but Almunia is unable to give any answers.
- The Judge says, "too bad, we want to hear about it now", regarding the one-year gap between Loro Parque announcing Morgan may have hearing problem & getting her tested. Almunia cannot answer any questions about Morgan's hearing defect because they don't know anything – Loro Parque are just claiming she has one and haven't tested her yet, despite the offers of experts to do so.
- Almunia says haven't been able to test Morgan because it takes time to get hold of the high-tech equipment required to test her hearing, and training Morgan the necessary behaviours required to conduct the test takes time.

1509 Morgan's lawyer has crucial questions for Almunia but the Dolfinarium Harderwijk's lawyer refuses to answer saying they don't want Almunia to be cross-examined.

Why are Dr. Visser's observations so different from what Almunia claims is going on with Morgan? – questions Morgan's Lawyer.

Why did Almunia talk of auditory tests for Morgan on the 5<sup>th</sup> October yet still they are no closer to having an answer about Morgan's hearing abilities? – Morgan's lawyer goes on to question.

1514 Jeff Foster has done hearing tests on cetaceans before – he says the test takes 20 minutes and you don't need to teach any special behaviours to the orca for it. The equipment is easy to get hold of. Morgan's lawyer has crucial questions to ask Almunia based on the answers he has just given.

1516 Dolfinarium Harderwijk's lawyer says "no further comments".

1520 The Dolfinarium Harderwijk's lawyer says that whether Morgan can be released or not is irrelevant and that she has spent too long in captivity now - they say "let bygones be bygones". But Morgan has spent more time in the wild to this day than she has spent in captivity and the Free Morgan Foundation experts still agree that Morgan is a good candidate for release – she can be re-conditioned to hunt and feed on live fish, she is still young and she still displays wild traits and behaviours, amongst other evidence to support the idea she can be rehabilitated and released.

1523 Dolfinarium Harderwijk say we were unsuccessful finding her direct family despite best attempts - but Morgan was matched acoustically to her family / close family relatives, who were sighted in 2005 and twice in 2012.

1525 "Morgan is not capable of participating in a pod" claim Dolfinarium Harderwijk.

1528 "She (Morgan) is pretty bossy" claims Dolfinarium Harderwijk - they think she will negatively impact any wild pods because of this, the reason they give for why releasing Morgan will not help conserve the species.

1529 Dolfinarium Harderwijk think releasing Morgan into the wild will result in her "death or permanent loneliness".

Dolfinarium Harderwijk say they want recent evidence / observations to be ignored and only past evidence available at the time of issuing the permits to be examined during this current hearing.

1540 "If it is said that Morgan isn't being used for education that is misinterpretation" says Dolfinarium Harderwijk.

1550 Dolfinarium Harderwijk answer questions about the orca photos they submitted showing orca rakes – the photos were taken from an Alaskan orca catalogue but they know little else.

The Dolfinarium Harderwijk are asked how old the orca are in the photos they have submitted as evidence. They say they don't know but "...we think you can determine their (orca) age by the size of their dorsal fins." – the Dolfinarium Harderwijk sound uncertain when providing their "expert" knowledge.

1630 The Judge asks both parties questions for clarification what has already been discussed after a short recess.

Morgan's lawyer explains releasing Morgan will benefit the conservation of species, habitat and Morgan as an individual.

Capturing Morgan contradicts international conventions (such as ASCOBANS) explains Morgan's lawyer.

1655 Morgan's lawyer says that one way in which Dolfinarium Harderwijk violated their permit for Morgan is because a point came where they were no longer holding her with the intention of releasing her.

1657 Morgan is valuable to wild populations because the population is still recovering from a decline - Morgan is a breeding female.

1700 Loro Parque pretends to conduct real scientific research says Morgan's lawyer.

1701 The other orca held at Loro Parque were all born in captivity so are used to a world of little sound, unlike Morgan - thus acoustic studies conducted by the park are irrelevant, especially in relation to the conservation of wild orca.

1705 Members of Royalty, the general public, over 138,000 people from all over the world, supporters in the court room from all over world – they all care about Morgan, the Orca Coalition tells the Judges, all three of whom are listening with their undivided attention.

1710 "How Morgan is doing right now is no longer relevant for the decisions of this case" the Dutch Secretary of State finishes. "Morgan's well-being is irrelevant".

THE VERDICT OF MORGAN'S COURT HEARING WILL BE RELEASED PUBLICLY AT THE AMSTERDAM DISTRICT COURTS IN 6 WEEKS on 13th DECEMBER at 1330 Central European Time (1230 GMT).

