

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



The court hearing started just after 9am and finished at 1715, lasting for 8 hours, with short recesses interspersed throughout the day. Three Judges were attending court but only the senior one talked.

Present in the room included representatives from the Orca Coalition and their lawyer; representatives from the Free Morgan Foundation, including expert board members Dr. Ingrid Visser, Lara Pozzato, Jeff Foster and Jean-Michel Cousteau; representatives from the Dolfinarium Harderwijk, including their veterinarian van Elk, the park director Mr. Foppen and their lawyer; representatives from Loro Parque, including head of research Javier Almunia; the representative from the Dutch Secretary of State for the Ministry of Economic Affairs, Agriculture and Innovation and the Ministry CITES expert; members of the general public from all over the world supporting Morgan's planned rehabilitation and release. The courtroom was full.

Throughout the entire court hearing, the Judges appeared sympathetic to Morgan's case and emphasised on multiple occasions that he and the other Judges wanted to do their jobs properly by acting responsibly in giving due time, care and consideration to Morgan's case. The Judges estimated the hearing would be over within three hours of commencing, but were more than willing to remain presiding over this case for the entire day – even after the Amsterdam District Courts had officially closed for the day.

Dr. Ingrid Visser and Jeff Foster both recently returned from visiting Morgan in Loro Parque on two independent trips. Dr. Visser has visited Morgan at this facility before, earlier in the year. Dr. Visser gave a short scientific presentation, providing evidence which showed how Morgan is being used for commercial advertisement and profit by Loro Parque; how she is not integrated into the orca group at Loro Parque, how she has an abnormal number of rakes and bites inflicted by the other orcas, how these wounds have more than doubled in only four months; how Morgan is displaying stereotypic (abnormal repetitive) behaviours by chewing concrete and bashing her rostrum on the sides of the tanks (which is already resulting in Morgan harming herself); how Morgan has lost 1/3 of the tops of her teeth in 19 weeks from chewing on concrete; how the trainers neglect her by ignoring her and barely interacting with her outside of the shows; and how the trainers do not seem experienced enough to fulfil Morgan's needs for social interaction, or recognise the difference between behaviours displayed by the orcas (i.e. mistaking aggression for play).

Jeff Foster was an expert witness during the court hearing. He has worked with orcas both in captivity and in the wild. He has worked on the rehabilitation of a number of cetaceans, including three orcas (Keiko, Springer and Luna – Foster noted that Keiko and Springer were successful). In Foster's professional opinion, Morgan is not receiving the social stimulation or reinforcements she requires from the Loro Parque trainers; she has not integrated into the orca group at Loro Parque; she has an abnormal number of rake and bite marks on her skin; Morgan is in a stressful situation; she is still displaying wild behaviours and traits; she still spends a lot of her time underwater which is encouraging when considering her rehabilitation (one of the hardest aspects of rehabilitating an orca is conditioning it to change its focus from above water, where in captivity they are fed, trained, interacted with, to below water); she will still have memory of living in the wild, hunting and feeding



on live fish; she is a young female on the verge of becoming sexually mature which increases her chances of integrating with a wild pod if released. Overall, Foster is of the opinion that, for rehabilitation and release, Morgan "is an excellent candidate". Foster also added that Morgan's chances for successful rehabilitation and release will decrease the longer she is in captivity, but for the time-being she still is a good candidate. "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.

Morgan's lawyer raised concerns with the transport permit that was issued by the Dutch Government to the Dolfinarium Harderwijk to move Morgan to Loro Parque. He argued the permit has been breached, the clauses included were not respected and the permit itself should never have been issued because it is fundamentally unlawful – to note, the Dolfinarium Harderwijk no longer have their exemption (translated into a special permit) for rescue, rehabilitation and release – it has been issued to a different non-profit organisation named SOS Dolfijn. Furthermore, the transport and hosting of Morgan at Loro Parque was issued on the sole basis of scientific research but she is currently displayed and used in shows, as well as for commercial advertisement and profit.

The Dolfinarium Harderwijk were represented by their lawyer, their veterinarian van Elk and their director Foppen. They constantly repeated themselves throughout the court hearing, to the point that the Judges noted this and asked them to stop. They argued that new evidence and observations should be ignored, and that only evidence available from the last hearing, when the permits were issued, should be considered, despite the legal rule that new evidence could be provided up to 11 days prior to the hearing and despite them presenting one new document. They maintained throughout the entire court hearing that they had acted correctly at all times. They also maintained that Morgan's well-being was not an issue that should be raised in the hearing and that the question of her rehabilitation and release from a legal point of view was irrelevant. They compared their role in rehabilitating Morgan and the rehabilitation process to that of any other animals, specifically using a hedgehog and a rabbit as examples.

They provided some evidence in the form of two black-and-white photographs of orcas taken from what they claim was an Alaskan identification catalogue (not presented in court, not cited and not identified), with the aim of illustrating that it is normal for orcas to have rake and bite marks (this has never been disputed by anyone – rather, the number of rake and bite marks on Morgan is what is being questioned). When the Judge asked to have details about the animals depicted, the Dolfinarium Harderwijk were unable to tell the Judges how old the orcas were in the photographs, or even the sex of the orcas, even though the Judges said it was important to know if a comparison to Morgan was to be made – van Elk claimed that he supposed it could have been possible to guess the age of the animals by looking at their dorsal fins.

Javier Almunia, head of research, read a few statements on behalf of Loro Parque. Almunia contradicted all observations made about Morgan and her situation by Dr. Visser and Foster. He said that Morgan has integrated into the group of orcas held at Loro Parque and that she regularly spends time with them. Almunia stated that Morgan's behaviour can be considered normal and that her emotions are the same as those of orcas both in captivity and in the wild. Almunia also claimed that Morgan's health can be considered normal and went on to say that she receives the best husbandry and veterinarian care available. Almunia admitted that stereotypic (abnormal repetitive) behaviours such as chewing on concrete, are a common problem in captive orcas and that they try to fight these behaviours with enrichment, such as secondary reinforcements (which was not observed by Dr. Visser or Foster during their times visiting Morgan).

Almunia finished by saying that he has doubts about Morgan's hearing abilities – that she may be deaf. He said that Morgan's hearing will be tested by experts next week. The Judge questioned why

Loro Parque have suspected that Morgan may have hearing problems for a year but are waiting until the week after the hearing to get her tested. Almunia said that it took a long time to acquire the correct equipment to test Morgan and to teach her the behaviours required for the test to be conducted. However, the Orca Coalition lawyer noted that Foster (who has expert experience in conducting hearing tests on cetaceans) has said that no behaviours need to be taught to Morgan for the test to be conducted and the equipment is easy to get hold of – the whole test only takes 20 minutes. No mention was made of who these experts are that are going to test Morgan, even after direct questioning.

The Dolfinarium Harderwijk's lawyer refused for Almunia to be cross-questioned, even though the Orca Coalition's lawyer had crucial questions for him regarding Morgan and her situation at Loro Parque – questions for clarification purposes were not even allowed. The Judges were not happy about this and reminded the Dolfinarium Harderwijk's lawyer that this attitude went against and open, equal and productive hearing, that this lack of cooperation will be taken into due consideration by the court and that it may turn out unfavourable for them.

The Judges finished by asking both sides questions based on everything they had heard during the hearing. The Orca Coalition's lawyer explained how rehabilitating and releasing Morgan will benefit the conservation of the species (the Norwegian population is still recovering from a decline and Morgan is a young, breeding female), the conservation of the habitat in its natural state and conservation of the individual.

The Dolfinarium Harderwijk argued that adding a "bossy" orca like Morgan to a wild population will be detrimental for the conservation of that population. They believe that releasing Morgan into the wild will result in her "death or permanent loneliness".

The Judges asked whether parallels can be drawn with the successful rehabilitation and release of young, female Northern resident orca Springer. Her story is similar to Morgan's, only where Morgan was sent to Loro Parque, Springer was released. Springer has successfully re-integrated with her extended family and has been re-sighted in their company on many occasions, this year being the last time, ten years after she was released. The outcome of other cetacean releases also contradicts the belief of the Dolfinarium Harderwijk.

The Orca Coalition finished by telling the Judges how not only are members of the general public from all over the world, both in and out of the courtroom, supporting Morgan's rehabilitation and release, but over 120,000 individuals have signed a petition for Morgan's freedom, celebrities and members of Royalty have also made statements supporting Morgan's freedom, and Jean-Michel Cousteau was in court representing 1.5 million people who also support the Free Morgan Foundation rehabilitation and release plan and Morgan's freedom. The Judges listened to this with their undivided attention.

**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).**

