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Animal research ethics, legislation and practice and their application to scientific whaling

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Introduction

Although the International Convention for the Regulation of Whaling states it is:

> to provide for the proper conservation of whale stocks and… the orderly development of the whaling industry

its Article VIII allows any Contracting Government to:

> grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research.

Such scientific whaling permits should be expected to only allow activities which accord with national controls on animal experimentation, where those hold sway, and with international agreements where they may not, as in international waters.

Legislation

The laws on animal testing and research (which would cover scientific whaling) from a sample of countries in Europe, America and Asia show wide variation in controls and practice but some consensus on principles about the use and welfare protection of research animals and the ethics of animal research. It is generally recognised that scientific use is a special case, with laws on animal experimentation only part of wider animal welfare legislation, and permitting actions on animals for scientific purposes that would be otherwise prohibited. Often, regulation of scientific use comes within an overarching act on treatment of animals (as in Japan's amended Act on Welfare and Management of Animals). In others, eg UK, where different human-animal interactions are covered by different welfare laws, a specific act, the Animals (Scientific Procedures) Act 1986, allows researchers to undertake activities prohibited by other laws but under strict control. (See also Fry 2012).

Ethics

There is wide consensus on underlying ethics. As the Council of Europe Convention ETS123 1986 (Council of Europe 2005) preamble puts it:

> man has a moral obligation to respect all animals and to have due consideration for their capacity for suffering

but:

> man in his quest for knowledge, health and safety has a need to use animals where there is reasonable expectation that the result will be to extend knowledge or be to the overall benefit of man or animal, just as he uses them for food, clothing and as beasts of burden.

In Japan, where the scientific whaling catch was 1,004 in 2008/9[1], the official translation of the Act on Welfare and Management of Animals 1973 (as amended) reads in Article 2:

> animals are living beings, no person shall kill, injure, or inflict cruelty on animals without due cause

and in Article 41:

> (…in the Case of Providing Animals for Scientific Use) (1) ….consideration shall be given to …alternative methods to that of the use of animals ...and reducing the number of animals... (2) ...a method that minimizes the pain and distress to the animal as much as possible shall be used.

Japan, thus, recognises the concept of the Three Rs (Replacement — using non-sentient material that replaces use of animals in experiments or tests; Reduction — using the minimum number of animals for the scientific objectives; and Refinement — avoiding, alleviating or minimising potential pain, distress and other adverse effects). This concept is widely accepted. It can be seen in the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (2004), for example, and in the Canadian

[1] 'Special Permit Catch' figures published by the International Whaling Commission.

Council on Animal Care (CCAC) (1993) and the United States Institute for Laboratory Animal Research (2011) Guides. It is explicit in EU Directive 2010/63/EU (2010) which states in preliminary paragraph 11:

> the principles of replacement, reduction and refinement should be implemented.

The other general principle is that of justification for inflicting any pain and distress on the animals. The EU and Australia, for example, expect a harm/benefit analysis to be part of the assessment of a scientific programme. As the UK Animals Scientific Procedures Act (1986) states in section 5(4) this is a requirement to:

> weigh the likely adverse effects on the animals concerned against the benefit likely to accrue as a result of the programme.

Japan's Guidelines (Science Council of Japan 2006) only specify prior scientific justification and minimal pain and distress for the work in progress. The approach in the USA is similar (USA Animal Welfare Act 1966 as amended [United States Department of Agriculture 2010]) S2143 3(a):

> standards …in experimental procedures to ensure that animal pain and distress are minimized.

This gives no stimulus to choose beforehand a scientifically valid option likely to involve less suffering. However, a benefit justification may be required by the institution (as in the University of Minnesota 2011).

Controls and monitoring

Controls vary from a mandatory national licensing of the researchers who carry out the work, the scientific programme of research and the place where it is undertaken (UK), to a voluntary system of animal experimentation which is the responsibility of researchers and research institutes (Japan). However, apparent deficits in the controls specified in law or guidelines may be offset by norms of acceptable practice and, on the other hand, what seems tight regulation may be interpreted more flexibly. Commonly, as in the USA, Canada, most European countries, and Australia, the requirement is for an institutional, or local or regional, animal ethics committee or a care and use committee, whose approval is needed before work is undertaken. An institutional care and use committee is also a feature of the Japanese voluntary system.

Effective regulation needs not only good controls but also good monitoring and enforcement, and proportionate and dissuasive penalties. In the primary legislation sampled, sanctions from variation in permissions and fines to imprisonment for the individual were specified, but local disapproval can be an additional effective constraint, as can the potential withdrawal of research funds. Monitoring typically relies upon institutional review and inspection, with many countries, like the USA, supplementing this with national inspectors. In the UK, unusually, the law requires both assessment and inspection at a national level, making both less susceptible to local influences and more able to promote national standards. Prospective evaluation decisions presume adequate monitoring and inspection, without which prospective assessment and approval may educate but not be respected in practice. Also, as the report of the Federation of European Laboratory Animal Science Associations (FELASA) Working Group on Ethical Evaluation (2005) pointed out, there should be:

> the power to stop animal studies, when, for example, authorisations are exceeded or unexpected adverse events occur.

Work on wild animals, such as scientific whaling, is conducted without on-hand institutional management oversight or veterinary or animal care advice, and inspection is more difficult, so monitoring may be heavily dependent on scrutiny of records, and it is important that these are accurate and sufficiently comprehensive.

Enforcing or encouraging good practice has difficulties at each level of regulation. At the international level there is a risk that regulation may be inadequately monitored and poorly enforced. National regulation and standards, however, may drop below international norms. Institution-level regulation is susceptible to local drift from national standards, little external verification, inadequate internal monitoring and little drive for improvement. Researcher self-regulation is liable to drift from institutional/national/international standards, and may have inadequate external input. So, best regulation would be achieved by elements of enforceable requirements and monitoring at all these levels, and informed by adequate knowledge of the species.

Conclusion

Given the evidence for sentience of cetaceans and the international interest in whaling, it might be expected that evaluation and monitoring of work under special permits would be of a high international standard, with good national controls and monitoring, and the reinforcement of researcher commitment to the Three Rs. This would mean a prior harm/benefit analysis as well as scientific evaluation, and consideration of replacement, reduction and refinement before, during and after the work. Ideally, there would be ongoing inspection and rigorous scrutiny of the records and results.

However, there is considerable variation across the world in regulatory regimes, from the EU specifying that prior harm/benefit assessment, consideration of replacement, reduction and refinement, and effective control should be required in primary legislation, to the voluntary system in Japan. In many places, how close practice comes to the ideal will depend heavily on the standards set by the research institutions, research teams and the researchers themselves.

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