

SJR

31

SENATE STATE AFFAIRS COMMITTEE

Date received 3/12

Bill Number SJR 31 Title Capture of orcas in Alaska waters

Fiscal Note	Position Paper	Date requested	From	Amount	Date Rec'd Note	Rec'd Paper
0						

CONTACTS

Backup list

P. 2, line 15
"respectfully"

HEARING INFORMATION

NOTES:

FINAL ACTION _____

DATE _____

Original sponsors: V.Fischer, Rodey,
Halford, et al

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 S FOR SENATE JOINT RESOLUTION No. 31 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the capture of orcas in
6 Alaska waters.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS the State of Alaska and its people have an abiding interest in
9 the wildlife of the state; and

10 WHEREAS the National Marine Fisheries Service has issued to Sea World,
11 Inc., a permit to capture 100 orcas (killer whales) in Alaska waters and to
12 retain 10 of the orcas for breeding and public display; and

13 WHEREAS the granting of a permit for the capture of orcas in Alaska is
14 a major federal action resulting in a significant environmental impact on
15 the State of Alaska; and

16 WHEREAS the State of Alaska has been engaged in discussions with Sea
17 World, Inc., concerning the issuance of a state permit that would condition
18 the capture of orcas on (1) performance of certain investigations prior to
19 capture, (2) compliance with conditions regulating the locations, methods,
20 times and other aspects of capture, (3) providing for observers to be
21 stationed aboard vessels used for captures, and (4) providing for the
22 reimbursement of certain costs that may be incurred by the state as a
23 result of capture activities; and

24 WHEREAS, during testimony given before the Alaska Legislature and in
25 negotiations with the Alaska Department of Fish and Game, Sea World, Inc.,
26 agreed to abide by state decisions with respect to the taking of orcas, but
27 subsequently has denied making such commitments and has stated its inten-
28 tion to ignore the wishes of the State of Alaska and its people; and

29 WHEREAS Alaskans have testified overwhelmingly against the capture and

1 removal of orcas from Alaska waters;

2 BE IT RESOLVED by the Alaska State legislature that the Congress of
3 the United States is requested to (1) prohibit the taking of orcas in
4 Alaska waters; or (2) require that the capture of orcas in Alaska waters be
5 carried out only after public hearings and an environmental impact state-
6 ment are conducted in Alaska by the National Marine Fisheries Service and
7 only in accordance with conditions of capture established by the State of
8 Alaska; and be it

9 FURTHER RESOLVED that the National Marine Fisheries Service is re-
10 quested to (1) suspend the permit issued to Sea World, Inc., for the cap-
11 ture of orcas in Alaska waters until an environmental impact statement is
12 completed; or (2) require that Sea World, Inc., abide by conditions of
13 capture to be established by the Alaska Department of Fish and Game; and be
14 it

15 FURTHER RESOLVED that the governor of Alaska is ^{respectfully} requested to (1)
16 vigorously pursue implementation of this resolution; and (2) act firmly to
17 prevent illegal or unauthorized interference with or harassment of orcas in
18 Alaska waters.

19 COPIES of this resolution shall be sent to the Honorable George Bush,
20 Vice-President of the United States and President of the U.S. Senate; the
21 Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives;
22 and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S.
23 Senators, and the Honorable Don Young, U.S. Representative, members of the
24 Alaska delegation in Congress; William G. Gordon, assistant administrator
25 for fisheries, National Marine Fisheries Service; and the Honorable Bill
26 Sheffield, Governor of Alaska.
27
28
29



Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

M E M O R A N D U M

Date: March 20, 1984
To: Senate State Affairs Committee
From: Senator Vic Fischer
Re: Brief history of SJR31

In November 1983, the National Marine Fisheries Service issued a permit to Sea World, Inc. to capture up to 100 killer whales in Alaska waters for public display and research purposes. Subsequently, major concerns have been raised by Alaskans. Among them are:

- Issuing the permit presented a federal action that could result in a significant environmental impact on Alaska and its people.
- There had been no public hearings held in Alaska. The single hearing on the federal permit was held in Seattle, Washington.
- No one representing the state of Alaska was present during the Seattle hearing and since our citizens are, by and large, ignorant of the federal permitting process, they were unable to respond within the public comment period.
- The Alaska Department of Fish and Game had supported the permit under the condition that they be granted authority to monitor compliance with the permit and establish times and places for the captures. That request was ignored and by NMFS.
- The Alaska Native Brotherhood passed a resolution asking for a ban on the capture of killer whales for any purpose. The cultural and religious significance of killer whales to some Southeast Alaskan natives was not considered during the federal permitting process.
- The opportunity to view killer whales in the wild is a major tourist attraction in Alaska and tour boat operators, primarily in Prince William Sound, have testified that they fear the captures will reduce the overall population and drive the orcas away from areas where they have been viewed in the past.

SJR 31 was introduced by Senator Vic Fischer, along with eight co-sponsors, in order to address Alaska's interest in killer whales within state waters, the effects of the proposed captures on that population, and Alaska's marine ecology as a whole.

The proposed State Affairs Committee substitute before you asks that the state's request to monitor the captures be granted or, failing that, that NMFS withdraw the permit until public hearings are held in Alaska and an environmental impact statement is completed.

While Alaska's role in the permitted capture of marine mammals under federal control may be extremely limited, other states faced with a similar situation have been successful in banning captures within their three mile limit. Further, federal legislation is currently pending that would amend the marine mammal act to prohibit capturing for public display purposes in the future.

The wishes of the Alaska legislature as presented through this resolution, therefore, has significance on both a state and national level. Testimony received during two teleconferences on the House resolution (HJR58) and two hearings on SJR 31 was near unanimous in its opposition to any captures for any purpose. Every person or agency who offered testimony agreed that the state should have a lead role in monitoring compliance with the permit conditions, should the captures actually take place.

BACK-UP INFORMATION:

- * 1/18/84 letter from Ralph Monro, Secretary of the state of Washington, and a copy of Washington state resolution banning captures.
- * ANB resolution
- * HR4457 (federal legislation banning future captures)
- * Testimony from Greenpeace International
- * 1/9/84 letter from Sea World, Inc. to ADF&G outlining scope of proposed captures and research project.
- * NMFS permit authorizing captures in Alaska

/gb



Grand Camp
Alaska Native Brotherhood

71ST, ANNUAL ANB-ANS GRAND CAMP CONVENTION
JUNEAU, ALASKA
NOVEMBER 14-19, 1983

RESOLUTION NO. 92

- WHEREAS, Sea World of San Diego, California has been issued a permit by the Federal government to capture 100 killer whales in a period of five years, and
- WHEREAS, The state of Washington and the government of Canada have both opposed and stopped the capture of killer whales within their water boundaries in the past, and
- WHEREAS, Sea World has promised safe capture of these mammals, but has caused many deaths in past captures because of their use of seal bombs, high speed boats, sea planes, and methods of capture, and
- WHEREAS, These offenses during the capture of killer whales influenced the state of Washington to file a law suit against Sea World in 1976, putting an end to their operations and cancelling their permit, and
- WHEREAS, The state of Alaska has no mammal protection laws to protect killer whales, or to prevent this type of operation within the water boundaries of Alaska, NOW

THEREFORE BE IT RESOLVED that the 71st Annual Grand Camp Convention of the Alaska Native Brotherhood and Sisterhood assembled in Juneau, Alaska strongly urge the State of Alaska to enact legislation banning the capture of killer whales within the boundaries of Alaska waters, and

BE IT FURTHER RESOLVED that an intense investigation be conducted by the Dept. of Fish and Game on the methods used by Sea World in their capturing methods in Puget Sound. Copies of this resolution to be sent to the Assistant Administrator for Fisheries, Washington, D.C., to Alaska Legislature, and the U. S. Delegation from Alaska.

ATTEST:

I certify that this resolution was adopted by the ANB ANS Grand Camp in Convention at Juneau during the week of Nov. 14-19, 1983.

Ronald Williams

Ronald Williams, Grand President

Albert Kookesh

Albert Kookesh, Grand Secretary

Past ANB Grand P...ents
Re...
A...
C...

Frank Peratrovich
Patrick J. Paul
Thompson Jackson

ANB RESOLUTION

Frank See
Walter Sebottell
Richard Selt
D...

Nelson D. Frank
Frank O. Williams
Herbert Hara
B...

SECRETARY
of STATE



Ralph Munro

January 17, 1984

Olympia, Washington 98504
(206) 753-7121

Representative Mike Szymanski
Pouch V
State Capitol
Juneau, AK 99811

Dear Representative Szmanski:

I write to commend you for your intention to sponsor legislation to ban the capture of Orcas in Alaskan waters.


In 1976, my wife and I had the unfortunate experience of watching a whale capture here in Southern Puget Sound. It was both cruel and inhumane, as well as in violation of the federal permits issued for that incident.

Just a short time after we witnessed the capture attempt, the Washington State Senate passed Senate Resolution 222, which stated Washington's policy of prohibition of further captures in our waters. Senate Resolution 222, which I have enclosed for your reference, calls for a "moratorium on the intimidation, harrassment, hunting and capturing of killer whales in Puget Sound and adjacent salt waters." The resolution still stands as a statement of legislative policy. In addition, the Washington Game Commission adopted a set of policies to guide the Department of Game in the management of the state's wildlife resources. This policy states that "commercial exploitation of wildlife . . . will be opposed unless specifically authorized by the Commission as not being harmful to the resource." We feel that this policy is particularly relevant when applied to a situation where orcas would be captured in Washington, then transported out-of-state for commerical purposes, such as amusement parks in Southern California.

Should you or your staff need any materials, please call on me directly. I should note that Governor Spellman, the Washington State Game Department, our Lands Commissioner, and many other elected officials from both sides of the political aisle have been strongly opposed to these catures and will continue to fight for stronger national legislation to ban the capture of orcas.

Again, I commend you for sponsoring this important legislation.

Sincerely,


RALPH MUNRO
Secretary of State

RM:tu

Enclosure

1/17/84 letter From State of Washington

IN THE LEGISLATURE
of the
STATE OF WASHINGTON



SENATE RESOLUTION 1976-222

By Senators, Cunningham, Bailey, Lewis (Harry), McDermott, Wilson and vonReichbauer:

WHEREAS, Certain species of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities and such species should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part; and

WHEREAS, There presently exists within Puget Sound and the salt waters contiguous thereto a species of mammal commonly known as the "killer whale;" and

WHEREAS, There is inadequate knowledge of the ecological and population dynamics of such mammals and of the factors which bear upon their ability to reproduce and survive in an atmosphere of continuing encroachment by man; and

WHEREAS, It is the sense of the Washington Legislature that the killer whales should be protected and encouraged to develop in a natural state and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem; and

WHEREAS, Present methods and techniques of pursuing and capturing the killer whales present substantial and serious questions as to their efficiency, humaneness and effect on marine life in this delicate ecosystem;

NOW, THEREFORE, BE IT RESOLVED, By the Senate of the State of Washington, that the United State Congress be requested to declare an immediate moratorium on the intimidation, harassment, hunting and capturing of killer whales in Puget Sound and adjacent salt waters;

BE IT FURTHER RESOLVED, That the United States Congress be requested to direct the appropriate federal agencies to cease issuing permits to hunt and/or capture this mammal and revoke all such existent permits;

AND BE IT FURTHER RESOLVED, That copies of this resolution be sent to the United States Department of Commerce, the National Marine Fisheries Service, members of the Congressional delegation from this state, the Marine Mammal Commission, and the Scientific Advisors on Marine Mammals.

Adopted March 9, 1976



98TH CONGRESS
1ST SESSION

H. R. 4457

To prohibit the taking and importation of killer whales for public display purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1983

Mr. CHANDLER (for himself, Mr. FOLEY, Mr. DICKS, Mr. MORRISON of Washington, Mr. LOWRY of Washington, and Mr. SWIFT) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To prohibit the taking and importation of killer whales for public display purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 101(a)(1) of the Marine Mammal Protection Act
4 of 1972 (16 U.S.C. 1371(a)(1)) is amended by adding at the
5 end thereof the following new sentence: "After the effective
6 date of this sentence, no permit may be issued for the taking
7 and importation of killer whales (*Orcinus orca*) for public dis-
8 play purposes."

9 SEC. 2. The amendment made by the first section of this
10 Act shall take effect on the date of the enactment of this Act

FEDERAL LEGISLATION BANNING CAPTURES



SUBMISSION TO
THE U.S. NATIONAL MARINE FISHERIES SERVICE

COMMENTS CONCERNING SEA WORLD, INC'S
ORCA CAPTURE PERMIT APPLICATION UNDER

THE GUIDELINES OF THE U.S. MARINE

MAMMAL PROTECTION ACT

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Greenpeace Northwest

Alan Reichman, Wildlife
Campaign Coordinator

June 6, 1983

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TESTIMONY BY GREENPEACE

ERIES SERVICE

CAPTURE PERMIT

1. MARINE MAMMAL

of Greenpeace—with ap-
granting Sea World, Inc. a
orca) from Alaska and Cal-
s of the U.S. Marine Mammal

Sea World orca capture op-
t of our location. Therefore,
those submitted by Greenpeace
Sea World as well as other con-

on opposing a potential Sea

ans of capturing orcinus orca

cation for Sea World's proposed
a orcinus orca populations; as
entific justification for the
conduct.

source of display animals for
operations—as well as potential
Sea World's proposed research appears
justify its desire to provide its

ons in the State of Washington.
: have experienced the negligence
the State of Washington success-
ture operation was subsequently

1
2
3



SUBMISSION TO THE U.S. NATIONAL MARINE FISHERIES SERVICE

COMMENTS CONCERNING SEA WORLD, INC.'S ORCA CAPTURE PERMIT

APPLICATION UNDER THE GUIDELINES OF THE U.S. MARINE MAMMAL

PROTECTION ACT

The Pacific Northwest regional office of Greenpeace—with approximately 20,000 members—is opposed to granting Sea World, Inc. a permit to capture killer whales (orcinus orca) from Alaska and California coastal waters under the guidelines of the U.S. Marine Mammal Protection Act.

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Greenpeace Northwest has experienced Sea World orca capture operations firsthand in the past as a result of our location. Therefore, we are submitting comments in addition to those submitted by Greenpeace U.S.A., emphasizing our experience with Sea World as well as other concerns.

There are four facets of our position opposing a potential Sea World orca capture permit:

1. The biological and ethical implications of capturing orcinus orca and holding them in captivity.
2. The clear lack of scientific justification for Sea World's proposed exploitation of Alaska and California orcinus orca populations; as well as an equally clear lack of scientific justification for the scientific research they propose to conduct.
3. Sea World's interest in procuring a source of display animals for its highly profitable marine circus operations—as well as potential sale to other aquaria worldwide. Sea World's proposed research appears to possibly represent an attempt to justify its desire to provide its facilities with a resource.
4. Sea World's pitiful capture operations in the State of Washington. As citizens of Washington State, we have experienced the negligence of Sea World firsthand. In 1976, the State of Washington successfully sued Sea World and their capture operation was subsequently shut down.

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I. BIOLOGICAL AND ETHICAL IMPLICATIONS

The risks of mortality to orcas during capture operations, transport, and captivity are manifold. There is a bonafide risk of death for non-target as well as target animals during capture, and an exceptionally high risk of mortality to captive animals during transport as well as the first few months of captivity. Furthermore, the longevity of captive orcas is far below that of orcas in the wild (please see the attached table provided by Washington Secretary of State Ralph Munro concerning orcas captured in Washington State and British Columbia waters from 1961-1976). Also, no orcas have ever successfully bred in aquaria facilities anywhere in the world. Thus, captive orcas are denied an opportunity to contribute to the survival of their particular pod or the population as a whole.

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Ethical considerations must also be scrutinized. For instance, we must consider the importance of the pod as the intricate social unit which orcas live within. During capture operations, entire pods are harassed: often by "California seal devices" (which are better known as seal bombs), high speed boats, and sea planes. As a result, non-target animals are adversely affected by such operations. All orcas within an affected pod are disrupted and disturbed by the removal of individual members. A trauma factor for all the whales must be considered. Furthermore, the conditions of confinement in aquaria enclosures are not acceptable by modern zoo-keeping standards. Orcas can range up to one hundred miles per day in the wild. Enclosures which are not realistically much larger than backyard swimming pools simply are not adequate. Orcas have sophisticated sonar systems for communication, hunting and navigation and live in perpetual distress in a captive environment wherein their communications reverberate off concrete walls.

II. LACK OF SCIENTIFIC JUSTIFICATION FOR PERMIT

Sea World does not provide ample evidence supporting their estimate of a world orca population of 200,000 animals. Furthermore, Sea World does not provide sufficient information concerning the stocks in Alaska and California they wish to exploit. Greenpeace Northwest supports the reasons given by the Moclips Cetological Society of Friday Harbor, WA. in its opposition of a potential Sea World permit for these reasons as well as the others they cite.

We agree with Moclips' critique of Sea World's plan to develop a "sustained captive breeding population." Orcas have never successfully bred in captivity. Greenpeace Northwest recommends that Sea World demonstrate that it can provide a captive environment wherein orcas that are currently in captivity can successfully breed before they are permitted to capture more orcas for the explicit purpose of breeding orcas. Until Sea World can successfully demonstrate that captive orca breeding is possible, a permit should not be granted.

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Also, Sea World does not provide sufficient justification for the research that it wishes to conduct. They do not establish that such research could not be successfully conducted from orcas that are currently in captivity. There, especially is no justification for Sea World to transport orcas away from the capture site if they are going to be released. Sea World needs to clarify its intentions concerning the duration of time they intend to experiment on whales. They are requesting up to three weeks to conduct experimentation yet Lanny Cornell claims the whales will be held only twenty minutes to two hours in a Seattle Post-Intelligencer article of June 2, 1983 (which is enclosed). Sea World only concedes that it will "attempt" to release orcas near other orcas. Furthermore, they could never insure that orcas would be released at locations where they could reintegrate themselves into their pods. Given the intricacy and dynamacy of the relationship between an individual orca and its pod this could cause an inhumane level of pain and suffering.

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In summation, Greenpeace Northwest is in agreement with the Moclips Cetological Society's comments concerning Sea World's lack of evidence regarding orca population sizes; the lack of credibility for their proposed "sustained breeding population"; and the lack of justification for the validity as well as methodology of the research they propose to conduct.

III. SEA WORLD'S OVERRIDING INTEREST IN PROCURING DISPLAY ANIMALS

When one traces the history of the orca capture industry, one realizes that Sea World may be more interested in procuring a source of display animals for its highly profitable marine circuses than it hopes to increase scientific knowledge of orcinus orca.

As I will further explain in section IV of these comments, Sea World conducted its capture operations in Washington State waters until it was successfully sued by the State of Washington in 1976. As a result, Sea World's "orca capture expert" Donald Goldsberry travelled to Iceland where he helped start a similar capture operation based at the Saedryasafned Zoo (see accompanying portion of Erich Hoyt's The Whale Called Killer, New York, E.P. Dutton, 1981). Iceland has been Sea World's source of orcas since 1977.

Since the National Marine Fisheries Service has temporarily stopped issuing permits allowing the importation of orcas from Iceland, Sea World is wondering where its display animals will be obtained from. The National Marine Fisheries Service should consider the possibility that Sea World is submitting this application because its Icelandic source has dried up.



IV. SEA WORLD'S RECORD IN WASHINGTON STATE

Until March of 1976, Sea World regularly attempted—many times successfully—to capture orcas in Washington State coastal waters. Their capture operations raised considerable public concern. One such occasion is described by Sheldon Campbell in his Lifeboats to Ararat (New York: Times Books, 1978):

"A year before this time (Campbell has described a confrontation between Goldsberry and Don McGaffin, a columnist with Seattle's KING-TV which is an NBC affiliate, in the preceding paragraph) a tragedy had occurred which stirred many of the residents around Penn Cove to anger, for by 1970 killer whales were a welcome addition to the local scenery, coming as they did around the same time every year, generally in August, remaining awhile, and then departing on what happened to be an annual migration. In 1970 some of the visiting whales had been left behind dead, their corpses washing up along the shore. Several had their bellies slit and rocks, concrete, and old chunks of iron placed inside. Because whale collectors had been in the vicinity before the deaths, some residents blamed them. (Footnote at bottom of page: "Nothing was proved but accidents do occur in animal collecting, particularly in the earlier stages of developing capture techniques.")"

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While it has never been proven that Sea World's orca capture operation under the direction of Donald Goldsberry killed the orcas, it has never been proven otherwise.

In early March of 1976, Sea World attempted its last ever capture attempt in Puget Sound waters. Sea World utilized seal bombs, high speed boats, and sea planes to herd whales from north of the Tacoma-Narrows Bridge to Budd Inlet, just outside of Olympia. A heated public outcry ensued. On Wednesday, March 10, Governor Dan Evans asked Attorney General Slade Gorton to file suit in District Court at Seattle to block the removal of orcas that were trapped at Budd Inlet.

The lawsuit questioned whether Sea World was authorized to use the seal bombs, etc. within the terms of the permit that had been issued by the U.S. National Marine Fisheries Service. I have enclosed some of the transcripts of Sea World's appeal that was dismissed by the U.S. District Court. Many of the transcripts from the successful suit are not included in the file that is held in archives in Seattle, WA.

Judge Morell Sharpe's verdict ruled that the defendants illegally pursued orcas in a prohibited zone north of the Tacoma-Narrows Bridge. Moreover, Sea World's permit stipulated that the allowed method of capture would be as follows:

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"Methods of capture will be allowing the animals to enter a bay or harbor and then closing off the mouth or entrance with a specially designed mesh net which keeps the animals inside the bay but allows the passage of fish back and forth. From this point another net is placed inside the original net to herd the animal into a working area and from there the animals are divided into smaller groups and put in floating pens large enough to accommodate two or three animals as necessary. Some animals which are to be taken are then separated, placed in floating pens, and the remaining animals are freed. The size of the pens would be adjusted so that individual animals accommodated would have at least twice their body length in depth within the pen. This method allows the collector to evaluate the animals and pick out the most likely specimens, while not placing undue stress on the animals."

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Clearly, these terms do not permit the usage of explosives, high speed boats, and sea planes for herding. Sea World broke the terms of its agreement.

While Sea World is not asking for authority to capture orcas from Puget Sound waters in this application, we must consider that they have not followed National Marine Fisheries Service regulations in the past. I have enclosed a copy of the 1976 Washington State Senate Resolution that bans capture and harassment of orcas in Washington State coastal waters.

Interestingly enough, the text that Sea World cites as its description of the techniques it plans to utilize in proposed capture operations is co-authored by none other than Donald Goldsberry.

V. SUMMATION

Greenpeace Northwest agrees with the recommendations of the Moclips Cetological Society of Friday Harbor, WA. and further recommends that:

- 1) Sea World, Inc. conducts any scientific research it deems necessary on orcas that are currently in captivity at its facilities in San Diego, CA., Aurora, OH., and Orlando, FL., as well as other aquaria worldwide.
- 2) Sea World, Inc. demonstrate that it can successfully develop a captive environment where orcas that are currently in captivity can breed successfully. Orcas that are currently in captivity at their facilities as well as other aquaria could be transferred to the new enclosure system.
- 3) Public hearings be conducted to further scrutinize Sea World, Inc.'s application. Citizens should be invited to voice their opinions con-

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cerning this proposal. A hearing should be held in the Puget Sound region of Washington State as the citizens of Washington State have had experience with Sea World, Inc.'s capture operations in the past and should be allowed to participate in the decision-making process.

Yours Sincerely,

Alan Reichman

Alan Reichman
Wildlife Campaign Coordinator
Greenpeace Northwest

GREENPEACE,
TITLE

ENCLOSURES

10 SHEPHERD
LEA
10 SUNNYSIDE
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10 TITLE WA
J

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CORPORATION
REGISTRATION

A Scientific Review of the SeaWorld Permit Application
of March 7, 1983 for Public Display and Scientific Research
Under the Marine Mammal Protection Act

16 - August - 1983

by Richard Ferraro and Dr. Merrill Spencer

Seattle, Washington

abstract:

On March 7, 1983 SeaWorld requested a five year permit to confine and capture Orca Orcinus (killer whale) for the reasons of public display and scientific experimentation.

This review addresses all scientific aspects of this permit request and is presented by two concerned research scientists. The SeaWorld permit request should not be approved. We request that this written review be entered into the record.

authors:

Richard Ferraro is a research scientist specializing in computer applications of medical electronics. He has a masters degree in Electrical Engineering, and acts as a consultant to electronics corporations, hospitals, Universities and the National Institutes of Health. He has focused his attention, in the past 18 months, to the Orca of the Puget Sound.

Dr. Merrill Spencer is a physiologist specializing in the field of Cardiovascular research. He has published over 160 scientific papers including comparative Physiology subjects, and 7 papers on Orca and Grey Whale physiology. He has served on many National panels reviewing scientific research proposals. He has participated in the capture of wild Orca in the San Juan Islands as well as Grey Whales of Laguna Ojo De Lebríe Baja California and thus has first hand experience with the logistical and stress related problems involved in the capture and confinement process.

review and risk assessment:

The general criticisms we have of the SeaWorld permit request are that it is poorly organized, omits important information, and lacks consideration for scientific hypothesis and protocol. The consultants listed have no defined roles nor is the five year plan clearly outlined.

The risks to Orcus Orcinus, both individuals and pods, are not clearly identified in either the capture and handling techniques nor in the medical procedures. Subsequently the methods for minimizing obvious risks are missing.

For example the risk of infection due to the tooth extraction process is not dealt with. No mention is made to the use of antibiotics in minimizing this infection potential. Nor is it suggested that the Orca whose teeth are to be extracted could be the animals that SeaWorld currently holds or plans to keep. Their standard animal husbandry program would further minimize the risk of infection.

The specific criticisms of the SeaWorld permit application follow. We have reorganized each of the experiments and procedures into the following five categories:

1. Breeding

There is no hypothesis stated as to how SeaWorld plans to successfully breed Orca when they have been unsuccessful in the past. The procedural changes such as larger pools, hormone levels, Karyotyping, vaginal swabs, and increased numbers of whales proposed could be tested on the 8 existing captive SeaWorld Orca. If a larger population of captive whales or a larger tank are believed to be the solutions to the unsuccessful breeding problem then the 8 current captive Orca owned by SeaWorld could be put into one of SeaWorlds larger tanks to prove the hypothesis. It is also not proposed that the freshly captured animals will be held in the larger tanks.

No where is it mentioned in this proposal whether any or all of the proposed Orca to be kept by SeaWorld for breeding purposes will be required to perform and how this performance schedule would effect the whales ability to breed.

2. Animal Husbandry

Tests involving the health care of the captured Orca including blood chemistry, liver biopsy, hematology, and nasal swabs are important for animal husbandry to protect the dollar investment. This is health care of captured animals and therefore provide no scientific justification for this proposal any more than these procedures are considered scientific research projects when applied to human health care.

3. Gastric Lavage

The reviewers believe that the gastric lavage has scientific merit in the analysis of the stomach contents of free ranging Orca. Gastric lavage could provide valuable information comparing stomachs contents of the free ranging Orca with the sacrificed Orca data from Rice. The only comparisons discussed however relate to adult male/non adult males however, and no mention is made regarding stress related changes caused by the capture process preceding the stomach lavage.

4. Population Dynamics, Vocalizations, Body Dimension, and Growth Rates

Census data obtained in the population dynamics studies could be of scientific merit yet we feel the success others are having with visual and photographic techniques merit further consideration.

Certain data from vocalizations, radio telemetry, spaghetti streamers cryogenic marking, and tagging desired could be acquired using less invasive techniques currently being successfully employed with free ranging Orca. The highly invasive techniques proposed could damage the very data they are trying to obtain by capturing, tagging with various markers, releasing and recapturing the Orca.

The mensural data made available through the original capture could be of scientific value however the plan to recapture the same whales up to 3 times involves serious risk to the individual Orc and to the pod. It is unclear as to how SeaWorld plans on using this mensural data. Again we feel that more extensive use of less invasive techniques should be explored before resorting to the proposed invasive techniques.

5. Respiratory Gas Analysis, Hearing and Aging

Certain data related to respiratory gas analysis, hearing thresholds and tooth extraction desired in this experiment could be obtained using already existing captive Orca. No justification is given for performing the hearing threshold tests or the respiratory gas analysis on Orca under captive conditions, what information is being looked for with these tests, or why they couldn't be performed on existing captive Orca.

conclusion:

In conclusion this 5 year massive invasion of Orca environment in the Alaskan waters is not justified on the basis of the scientific aspects of this proposal. The benefits proposed in this permit application are far outweighed by the risks of such an aggressive invasive disturbance of the free ranging Orca of the Alaskan and California waters.

Hon. W. H. F. ...

Sea World



Lanny H. Cornell, D.V.M.
Senior Vice President/
Zoological Director

January 9, 1984

Don W. Collinsworth
Commissioner
Alaska Department of Fish and Game
Support Building
Juneau, Alaska 99811

Dear Mr. Collinsworth:

As you will recall, several of us from Sea World have visited over the last several years with you and your staff to explore the possibility of our obtaining permits from the State of Alaska and from the federal government (National Marine Fisheries Service) to collect killer whales in Alaskan waters for public educational display and captive propagation here at Sea World and to conduct benign nonharmful research on wild killer whales in Alaskan waters. As you probably already know, we have obtained from National Marine Fisheries Service permits to collect an average of two killer whales per year over a five-year period - a total of 10 whales.

We therefore would like to follow through now with our original inquiry to collect an average of two killer whales per year from Alaskan waters (Kodiak, Shelikof Straits, Prince William Sound, Southeast) over a five-year period for the purposes of public educational display at our three Sea World parks in San Diego, California; Aurora, Ohio; and Orlando, Florida, and to conduct benign, nonharmful research on an unspecified number of killer whales which would be encircled coincidental to the collecting activities. These whales would be studied at the site of encirclement and released. The studies would include such things as morphometrics, blood

Sea World's to ADFAG OUTLINING SCOPE OF CAPTURE

Don W. Collinsworth
January 9, 1984
page two



sampling for genetic determination, photography, some animals would be cryogenically marked (painless freeze branding) and approximately six animals over the five-year period would have small radio-packs attached so their movements could be monitored by satellite. All of these activities, of course, and others as your Department recommends, will be conducted in concert with your scientists as well as those from the University of Alaska. As you know, we have worked closely in the past with such eminent scientists as Dr. Robert Elsner and Dr. John Burns, among others. Previous studies in concert with the Alaska Department of Fish and Game have included work on seals, sea lions and walrus. (We have, over the last few years, rescued and returned to good health an average of six or so walrus pups per year in cooperation with your Department and various Alaskan native corporations as well as Fish and Wildlife Service.)

These proposed studies on killer whales and other marine mammals in Alaska will provide data that are currently unavailable on the natural history, physiology, population dynamics, etc. as we have discussed. In addition, locations of groups of killer whales and other cetaceans will be more exactly pinpointed to allow tourist vessels and scientists to observe them in the wild.

Although we have had reports over the last few years of large numbers of killer whales ranging from several hundred to several thousand in Alaskan waters, the literature currently indicates there are approximately 250 to 300 animals minimum in the areas we suggest. We are currently in the process of conducting field research which will give us a more concise idea of minimum population numbers. Some of these early data will be available later this year and should boost the minimum numbers.

There have been some misconceptions about this project. Some would imply it is too extensive or is

Don W. Collinsworth
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in conflict with the U.S./IWC position. This is not the case, however. Neither the United States' position on whaling nor the IWC moratorium are threatened. Both the Russians and the Japanese are envious of the United States' capabilities with public-display. These they do not now have, but they will, in time, develop them. Further, the IWC position presently allows for the aboriginal taking of whales and, as you know, the United States' position on this issue immeasurably exceeds any position on live capture for public display. We believe these "problems" are intended to divert attention from the truth.

Our only intent at the outset was and still is to follow the IWC requests which outline coordination of science with capture for public display so as to accumulate as much knowledge as possible about marine mammals.

As you are already aware, the IWC charter currently extends only to the great whales taken for slaughter on the high seas. It was once previously extended to include bottlenosed whales, following six years of debate - a move still protested by some of the members. The IWC has not extended the charter to cover other whales and has certainly never studied live capture for public display as an obligation.

Some IWC killer whale management recommendations have been made: 1) The IWC asked the Soviets not to kill any more killer whales in the Antarctic after they killed over 900 killer whales in 1979-80. This request is valid, however, only until the Soviets provide more data on population and provide information on those already killed. The Soviet reply has been that they intend to slaughter no more killer whales and thus they foresee no need to supply the data requested. 2) Norway has been allowed to kill 52 killer whales each year ad infinitum, based on a minimum population of 1,115 killer whales in their waters. This quota is voluntary, but the Norwegians are complying.

Don W. Collinsworth
January 9, 1984
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Many countries which are signators to the IWC charter also are in favor of the moratorium and also currently exhibit killer whales for public display. They are not likely to abstain from or vote against the moratorium unless it conflicts with their display of cetaceans.

There is no move at present to include live capture in the IWC charter as this almost exclusively occurs in sovereign waters, not on the high seas. And, the total numbers taken for public display are so minute as to be nonexistent compared to those in fisheries, commercial slaughter and for scientific research alone. There are in all of North America a total of approximately 1400 seals, sea lions, dolphins and whales to educate 110-120 million visitors each year to zoological parks and aquaria.

We have on several occasions attended meetings to discuss the project. In May 1983 we suggested to National Marine Fisheries Service that the appropriate site for a public hearing would be in Alaska. We have met with representatives of the University of Alaska, the Alaska Department of Fish and Game, National Marine Fisheries Service, Alaska, the Alaska Congressional delegation representatives, as well as representatives from Governor Sheffield's office. In addition we have met with Alaska charter and tourist interests and look forward to more cooperation with these groups to enhance their knowledge of wild marine mammals.

The field studies and the research alongside or aboard our collecting vessels is to be accomplished in concert with scientists from Sea World, the Hubbs-Sea World Research Institute, the University of Alaska Institute of Marine Science and the Alaska Department of Fish and Game, as well as other scientists you may designate. Several of us will be in Juneau on or about February 8, 1984 and would like to continue our discussions on this matter

Don W. Collinsworth
January 9, 1984
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with you at that time at your convenience. We will be visiting earlier in that week with some of the people already indicated at the University of Alaska in Fairbanks.

Sea World currently maintains three killer whales in our Orlando, Florida park, three in San Diego, California and two for our Aurora, Ohio facility. Our goal would be to double these numbers for the creation of small breeding groups which would also serve to enhance our public educational displays.

Our oldest male killer whale is approximately 25 years old and has been with us for over 15 years. Other killer whales in our care have been with us for approximately 7 years and are 10-12 years old. All are doing well and are approaching sexual maturity. Thus we believe we have an opportunity which has never before been available - the captive propagation of killer whales.

To accommodate the success of our propagation program, we have designed and begun construction on huge new killer whale facilities in our Orlando park. This 5 million gallon "ocean" will be 4-5 times larger than our current facilities which are the world's largest. We also plan similar facilities in our San Diego park to be completed in 1987. We have also just finished remodeling the Ohio whale pools.

The research project, which is currently budgeted at \$250,000 per year for the five year period, a total of \$1.25 million, will be administered by the nonprofit Hubbs-Sea World Research Institute. Almost all of these funds will be spent in Alaska, as that is where the majority of the work will take place. This means an added \$5-7 million to the Alaska economy if you include a dollar multiplier of 5-7.

Don W. Collinsworth
January 9, 1984
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We have successfully conducted many projects in Alaska without incident in the past with the cooperation of the Alaska Department of Fish and Game, and we look forward to the onset of this particularly important project with your approval and cooperation.

Sincerely,

Lanny H. Cornell, D.V.M.

LHC/lā

cc: Robert A. Hinman

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

Notice of Issuance of Permit

On March 17, 1983, Notice was published in the FEDERAL REGISTER (48 FR 11310) that an application had been filed with the National Marine Fisheries Service by Sea World, Inc., 1720 South Shores Road, San Diego, California 92109 for a Public Display/Scientific Research permit under the Marine Mammal Protection Act of 1972 to take killer whales. Sea World requested to take a total of up to 100 killer whales over a 5-year period in order to study the biology, reproduction, and population dynamics of this species. Up to 10 animals were requested to be permanently maintained for public display and captive breeding, and up to 90 were requested to be captured, some maintained up to three weeks, studied, sampled, marked and/or tagged and released. Up to 10 of these animals were requested to be radio tagged and tracked. Also, Sea World requested to recapture and reexamine some animals. These activities were requested to be conducted in the waters off Alaska and California.

The public comment period originally closed April 16, 1983, and was subsequently extended until August 26, 1983 (48 FR 16934, 22976, and 32376.) A public hearing was held on August 16 and 17 in Seattle, Washington, and the hearing record remained open until August 26, 1983. All comments and documents postmarked by that date were evaluated and considered in the final decision.

Permit authorizing capture

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

Permit to Take Marine Mammals Permit No. 439

Sea World, Inc., 1720 South Shores Road, Mission Bay, San Diego, California 92109, is hereby authorized to take the marine mammals specified below for the purposes of public display and scientific research as described in the Permit Holder's application and subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the conditions hereinafter set out.

A. Number and Kind of Marine Mammals

1. Up to ten (10) killer whales (Orcinus orca), not less than 11.5 feet in length, of either sex may be taken and maintained in captivity. None of these animals shall be pregnant, nursing or unweaned. No more than two percent of the minimum population estimate for an area may be taken from that area over a two-year period. Furthermore, no more than two (2) animals may be removed from any distinct pod and no more than 1/2 of any sex/age class (immature, mature) may be removed from any distinct pod during a five-year period.
2. Up to ninety (90) killer whales (Orcinus orca) may be taken by capture and release. Animals encircled by net in the course of any authorized activity shall be considered as captured. Except for pregnant, nursing, or unweaned individuals, the following activities may be conducted on animals encircled, subject to the applicable conditions in Section B.
 - a. Up to 90 animals may be restrained, measured, photographed, and have blood samples, blowhole swabs and vaginal swabs taken.
 - b. Up to 90 that are not readily identifiable with natural markings, may be cryogenically marked.
 - c. Up to 20 may be spaghetti or streamer tagged.
 - d. Up to 10 may be radio tagged and tracked.
 - e. Up to 20 may have expired air samples taken.
 - f. Up to 20 may receive hearing tests.

- g. Up to 20 may be stomach lavaged.
- h. Up to 20 may have one tooth extracted.
- i. Up to 20 may have one liver biopsy taken.
- j. Up to 40 may be transported and temporarily held up to 3 weeks prior to release. All others shall be released as soon as possible at the capture site.

3. Animals previously captured under Section A-2 may be recaptured up to 2 times but not more than once in any calendar year. Previously studied animals may be restrained, measured, photographed, blood sampled, remarked if necessary, and have the radio pack removed or changed if necessary. All recaptured animals shall be released as soon as possible at the capture site.

B. Special Conditions

1. The animals shall be taken by the means, in the areas, and for the purposes set forth in the application unless otherwise specified in this Permit.
2. Not more than 30 animals under A-2 and A-3 may be taken per year in the Alaska areas. However, authorization from the Assistant Administrator for Fisheries is required prior to conducting any capture activities in any area. The Permit Holder shall conduct an initial survey of local abundance and shall submit a report which includes the number of animals, number of groups or pods, size of groups or pods and distribution of animals observed.
3. Not more than 4 animals under A-2 and A-3 may be taken per year in the California area. However, no animals shall be taken in California until authorized by the Assistant Administrator for Fisheries. Any request for authorization to conduct capture activities in California shall include a detailed report of at least one year's activities in Alaska, a detailed list of activities and numbers of animals proposed for California, and additional information on the population.
4. None of the animals authorized to be taken under Section A-2 shall be temporarily held beyond the time required for on-board research or beyond the time associated animals remain in the area, or transported to temporary holding facilities until authorized by the Assistant Administrator for Fisheries.
 - a. Provided the Permit Holder submits a satisfactory study design to determine whether the animals will rejoin a killer whale group or pod upon release, an initial authorization will be given by the Assistant Administrator for Fisheries, in consultation with the Marine Mammal Commission, to temporarily hold animals.

- b. Authorization to allow further temporary holdings will be based on the results of the present study, and the holding time will be limited to the maximum time experimental animals were held and known to rejoin a killer whale group or pod.
5. No liver biopsies, stomach lavage, tooth extractions, hearing tests or respiratory studies shall be conducted under Section A-2 until authorized by the Assistant Administrator for Fisheries, in consultation with the Marine Mammal Commission.
 6. In the event of the mortality of any animal in the field, all further capture activities shall be suspended, and a detailed report shall be submitted which includes the events surrounding the incident, necropsy results, and steps that will be taken to avoid similar problems in the future. Any animal that dies shall be considered taken under A-1 of this Permit. Authorization from the Assistant Administrator for Fisheries is required prior to resuming capture activities.
 7. Within 60 days of any capture activities, a detailed report shall be submitted which includes the dates and location of taking, numbers of animals and pods observed, composition of pods, numbers of animals encircled, numbers captured, disposition of animals captured (immediate release, held temporarily, permanently held for captivity), activities conducted on each animal, effects of the activities on the animals and any problems which may have arisen in connection with the activities.
 8. By December 31 of each year the permit is valid, an annual report shall be submitted which includes a summary of activities conducted, the results of survey and monitoring efforts designed to provide information on the population and the effects of the activities on the animals taken, and a general plan of activities to be conducted in the following year. Authorization from the Assistant Administrator for Fisheries, in consultation with the Marine Mammal Commission, is required each subsequent year to continue activities.
 9. Within 90 days of completion of the research, a final report shall be submitted which includes a summary of the results of the research.
 10. The Permit Holder shall notify the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 98802 (telephone 907-586-7221) or the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (telephone 213-548-2575), as appropriate, prior to conducting any field activities in order to determine the specific dates and locations of activities and if a NMFS observer is required. The Permit Holder shall consult with the Regional Director sufficiently in advance to allow for such a determination.
 11. Upon the request of the Assistant Administrator for Fisheries, the Permit Holder shall make available for study a copy of all film taken in conjunction with the authorized activities.

12. The Department of Agriculture's regulations and standards, "Marine Mammals; Humane Handling, Care, Treatment, and Transportation," shall apply and are made a part of this Permit.
 13. This Permit is valid with respect to the taking authorized herein until December 31, 1983.
- D. All General Conditions attached as Section C shall apply and are made a part hereof, except that Section C-2g, h and i are specifically waived.



William G. Gordon
Assistant Administrator for Fisheries
National Marine Fisheries Service

NOV 01 1983

Date

Notice is hereby given that on NOV 01 1983, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit to Sea World, Inc., subject to certain conditions set forth therein. The Permit establishes restrictions on the number and locations of animals which may be removed from the wild each year, and requires a preliminary survey of each area prior to the collection of animals. The Permit does not authorize any extended temporary removal, capture activities in California waters, or liver biopsy, stomach lavage, tooth extractions, hearing tests or respiratory studies at this time, but these activities may be authorized in the future based on additional information which may be submitted by Sea World. The Permit requires suspension of activities in the event of any mortality, and provides for annual review and required reauthorizations in order for the Permit Holder to continue activities each subsequent year.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

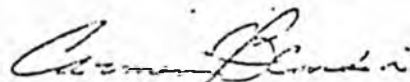
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802;

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450
Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600
Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

The complete record, including the application, all supplemental information
and the hearing record, is available for review in the Office of Protected
Species and Habitat Conservation. For further information, contact the Office
of Protected Species and Habitat Conservation, National Marine Fisheries
Service, U.S. Department of Commerce, Washington, D.C. 20235 (telephone 202-
634-7529).



Carmen J. Blondin, Deputy Assistant Administrator
for Fisheries Resource Management
National Marine Fisheries Service

NOV 01 1983

Date.

January 16, 1984

Mr. Robert B. Brumsted, Chief
Permits and Documentation Division
U.S. Department of Commerce
NOAA/NMFS
Washington, DC 20235

Dear Mr. Brumsted:

In our departmental letter to you, dated July 6, 1983, regarding application P2M by Sea World, Inc., we stated our concurrence with the issuance of that permit by your agency. However, we requested that as a condition of the permit, "approval of the State of Alaska must be obtained prior to any effort by Sea World, Inc. to take killer whales in state waters, under the broader authority of a Federal permit."

We have reviewed Mr. William G. Gordon's November 1, 1983, letter and your agency's permit (#439) to Sea World, Inc., which authorizes the taking of killer whales in Alaska waters. We did not find a permit condition which requires the permittee to obtain approval from the State of Alaska prior to conducting activities in state waters. Therefore, I request the following actions be initiated by your agency:

- (1) provide the permittee (Sea World, Inc.) with a written supplemental permit condition which requires State of Alaska approval prior to any efforts being undertaken to capture killer whales in state waters;
- (2) require that an observer from the National Marine Fisheries Service and/or the State be present during all capture operations in state waters; and
- (3) establish a procedure whereby the State of Alaska will receive copies of all reports and pertinent

January 16, 1984 letter to Mr. Brumsted

Mr. Robert B. Brumsted

2

January 16, 1984

information compiled by Sea World, Inc., to include mortality reports, capture reports, summaries of research results, and annual reports.

At your earliest convenience, please advise as to your intentions to fulfill the above requests. Should you consider these conditions unnecessary, the State may decide to oppose the Sea World, Inc. program in state waters.

Sincerely,



Don W. Collinsworth
Commissioner

cc: William G. Gordon

bcc: Game Headquarters
John Burns
Rep. Mike Szymanski

DWC:WLP:M²:h

COMMITTEE REPORT

SENATE

FURTHER:

3/13/84

Date

3/22/84

Mr. President:

The Committee on STATE AFFAIRS considered SJR 31

capture of orcas in Alaska waters.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

do pass

do pass with attached amendment(s)

replace with/or adopt CS for SJR 31 (SA)

new title

same title and recommends _____

and attached a "LETTER OF INTENT"

NEW FISCAL NOTE

reports it back without recommendation

recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

do pass
Chairman recommendation



Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

M E M O R A N D U M

Date: March 20, 1984
To: Senate State Affairs Committee
From: Senator Vic Fischer
Re: Brief history of SJR31

In November 1983, the National Marine Fisheries Service issued a permit to Sea World, Inc. to capture up to 100 killer whales in Alaska waters for public display and research purposes. Subsequently, major concerns have been raised by Alaskans. Among them are:

- Issuing the permit presented a federal action that could result in a significant environmental impact on Alaska and its people.
- There had been no public hearings held in Alaska. The single hearing on the federal permit was held in Seattle, Washington.
- No one representing the state of Alaska was present during the Seattle hearing and since our citizens are, by and large, ignorant of the federal permitting process, they were unable to respond within the public comment period.
- The Alaska Department of Fish and Game had supported the permit under the condition that they be granted authority to monitor compliance with the permit and establish times and places for the captures. That request was ignored and by NMFS.
- The Alaska Native Brotherhood passed a resolution asking for a ban on the capture of killer whales for any purpose. The cultural and religious significance of killer whales to some Southeast Alaskan natives was not considered during the federal permitting process.
- The opportunity to view killer whales in the wild is a major tourist attraction in Alaska and tour boat operators, primarily in Prince William Sound, have testified that they fear the captures will reduce the overall population and drive the orcas away from areas where they have been viewed in the past.

SJR 31 was introduced by Senator Vic Fischer, along with eight co-sponsors, in order to address Alaska's interest in killer whales within state waters, the effects of the proposed captures on that population, and Alaska's marine ecology as a whole.

The proposed State Affairs Committee substitute before you asks that the state's request to monitor the captures be granted or, failing that, that NMFS withdraw the permit until public hearings are held in Alaska and an environmental impact statement is completed.

While Alaska's role in the permitted capture of marine mammals under federal control may be extremely limited, other states faced with a similar situation have been successful in banning captures within their three mile limit. Further, federal legislation is currently pending that would amend the marine mammal act to prohibit capturing for public display purposes in the future.

The wishes of the Alaska legislature as presented through this resolution, therefore, has significance on both a state and national level. Testimony received during two teleconferences on the House resolution (HJR58) and two hearings on SJR 31 was near unanimous in its opposition to any captures for any purpose. Every person or agency who offered testimony agreed that the state should have a lead role in monitoring compliance with the permit conditions, should the captures actually take place.

BACK-UP INFORMATION:

- * 1/18/84 letter from Ralph Monro, Secretary of the state of Washington, and a copy of Washington state resolution banning captures.
- * ANB resolution
- * HR4457 (federal legislation banning future captures)
- * Testimony from Greenpeace International
- * 1/9/84 letter from Sea World, Inc. to ADF&G outlining scope of proposed captures and research project.
- * NMFS permit authorizing captures in Alaska

/gb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL

JUNEAU, ALASKA 99811

907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 21, 1984

SUBJECT: Use of joint resolution
(S.R. 31)

TO: Senator Vic Fischer

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether, in a fact situation in which a joint resolution was introduced addressing both state and federal agencies and it was later determined that the resolution be addressed to only state agencies may a committee substitute or sponsor substitute so amended continue to be a joint resolution.

In my opinion this would be permitted.

Resolutions are covered in Rule 49(a) of the Uniform Rules of the Alaska State Legislature. Under paragraph (3) it is stated that a concurrent resolution is used to request action of executive agencies and under (5) it is stated that a joint resolution is used to express the wish or view of the legislature. No specific provision is made for addressing both state and federal agencies.

The joint resolution is the more formal since it is treated in all respects as a bill except for the veto while a concurrent resolution does not require the full enactment procedure. In a mixed resolution it is necessary that a joint resolution be used since part of the material requires the more formal procedure.

If the resolution were amended so that it only is addressed to state agencies in my opinion the amendment would be proper and would not require that the resolution be converted to a concurrent resolution.

Senator Vic Fischer
Page 2
February 21, 1984

There are specific matters in which the use of a joint resolution or a concurrent resolution is mandated. In my opinion in the fact situation involved here use of a concurrent resolution is not mandated since compliance with the more formal procedure necessarily includes compliance with the less formal and the language of the rule which applies is quite general.

BGB:ojb
J3/116