SUBMISSION FORM


Please send your submission to the Ministry for Primary Industries by 5.00pm Friday 28 September 2012. Submissions can be emailed to awsubmission@mpi.govt.nz or posted to:

Animal Welfare Strategy and Legislation Review
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

The questions in this form should be treated as a guide only – you can choose to answer any or all of the questions, or provide any other comments.


Submissions and a summary of submissions will be published on the Ministry’s website. If you or your organisation do not want information in your submission to be published, please make this clear in your submission and explain why. The Ministry will take this into account when deciding whether to publish the submission or release it under the Official Information Act 1982.

Personal Information

Your name: 

Your organisation/sector/interest group (if applicable): PGG Wrightson Ltd
**Issue 1: New Zealand animal welfare strategy**

Q1. Do you have any overall comments or feedback about the proposed strategy and its approach?

Q2. What are the risks and benefits of adopting this strategy? Can you think of any missed opportunities or unintended consequences?

Q3. Do the values reflect New Zealanders' views about animal welfare? Would you suggest something else and why?

Q4. Do you have any comments on the proposed approaches, leadership roles, or Government priorities?

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**Answers and comments**

Overall, we are supportive of the intent of the proposed strategy. New Zealand's reputation as an ethical producer of agricultural products is important and we need to ensure that we have adequate regulation in place to protect our reputation from a small minority who do not uphold the standards that are expected by the majority of the industry and by our customers, both domestically and globally. Therefore, enforcement of a consistent, minimum standard of care is appropriate.

There are few areas of detail which we would comment on:

1. While not specifically discussed in the document, with regard to agriculture we believe it is important to recognise that livestock are generally one of the most valuable assets of a farming business and it is not in the interests of commercial farmers to ill-treat their animals. Therefore, when issues of neglect arise they are generally a symptom of other issues which either the farmer or farming business is having to deal with. Therefore, the first response should be to provide support, not penalties, assisting or requiring the situation to be remedied.

2. Care needs to be taken that the enforcement regime and fear of prosecution doesn't dissuade farmers from seeking assistance.

3. Any process around Animal Welfare Officers to issuing compliance orders needs to have sufficient safeguards build-in to ensure that animal owners have appropriate opportunity for representation and all available remedies are considered before irreversible actions are taken.

4. The definition of what is a reasonable level of care, especially in relation to preparation for adverse events, could be open to a wide range of interpretations and it will be important to bring clarity to this as individual standards are drafted.

5. Care will be needed in drafting the detailed regulations in order to get the right balance between practical farming considerations and the potential for animal injury. By way of example, while lameness in dairy cows is, in part, a function of farm size and construction of farm lanes we believe farmers are best placed to manage this risk and would be concerned if regulations moved beyond specifying a standard of care and moved into dictating farming practice.

6. While we commend the recognition of the role of "industry" in animal welfare we believe the term is used too broadly in the document and it would be helpful to set out the expectations on industry more clearly as the roles and motivations are likely to be different between the processing sector, the industry good organisations, Federated Farmers and the farm servicing sector. It is not readily apparent which of these bodies would fulfill the expectations set out for industry in section 3.5.

7. More explicit recognition should be given to the importance of our international customers as a stakeholder in our animal welfare regulations. Specifically we need a highly responsive regulatory regime which allows industry and government to quickly update standards if the attitudes of our customers towards a specific issue changes. This is important because, while voluntary compliance has a role in such matters, there are cases where it may not be sufficient.

8. One objective stated in relation to measuring of our performance is the need to develop our own systems before external consumers impose them. While we agree
that we need to be able to meet the needs of our consumers and anticipate their changing requirements, it does not necessarily follow that we need to implement changes in advance of consumer requirements.

9. The proposal mentions the need to improve measurement around our animal welfare performance but does not provide any details around a proposed methodology or approach. We would note that communication around measurement of performance is likely to require a careful balance to ensure the appropriate context is provided and categorisation of issues identified. Measurement is likely to focus on areas of non-compliance and such exception reporting, without proper context around the level of compliance and categorisation of the severity of issues, could create a negatively skewed perception of the industry and be unnecessarily damaging to New Zealand’s reputation.

Issue 2: Standards for care and conduct towards animals

Q5. Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines?

Q6. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

Q7. What impact will the proposed changes have on you and/or your organisation or sector?

Answers and comments

We agree that the mix of enforceable standards and guidelines are appropriate and it is important that a minimum standard is enforced. We do have a few specific comments:

1. We do believe that a distinction should be drawn between deliberate acts of cruelty and a failure to provide appropriate care. As outlined above, with regard to the farming sector, farmers have too much invested in their animals to set out not to provide appropriate care and in situations where appropriate care is not provided it is symptomatic of other stresses the farmer or farming business is under. While this does not excuse the behaviour or make the outcomes any more acceptable, it should inform our approach to how we deal with breaches of the regulations.

2. The proposal talks about people who own or are in charge of animals. It will be important for the regulations to be explicit on where responsibility lies and, in particular, where responsibility is temporal. For example, transport companies or sale-yard operators are responsible for animals for short-periods of time. Where the remedy to an animal welfare issue is for the animals to be sold, it is important that the transport company and sale-yard operator are able to manage their part in the process without fear of prosecution.

3. By way of further examples;
   - PGG Wrightson is involved in the livestock industry in a number of capacities. This can include owning animals that are farmed by others, and providing oversight to animals that are owned by one party and grazed by another.
   - There are a large variety of farm (and animal) ownership and management models which mean that it may not be immediately obvious who is effectively in charge of animal welfare and who actually has control of key decisions such as stocking rate and provision of feed. These decisions may be fully delegated to a farm manager or may be fully retained by the farm owner.

While it may be tempting in regulations to make all parties collectively responsible this would create inefficiency in the market and we would prefer to see regulations allow for the responsibility to be explicitly identified in contracts and passed from one party to another.
Issue 3: Criteria for developing standards

Q8. Would the proposals to add "practicality" and "economic impact" to the set of criteria improve the decision-making process, or would you suggest something else?

Q9. Do you agree that having "transitions" and "exemptions" is a better way to handle the situations that currently fall under 'exceptional circumstances'?

Q10. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q11. What impact would the proposed changes have on you and/or your organisation or sector?

Answers and comments

We agree it is important to add practicality and economic impact to the criteria. As an example we believe it is important to recognise that in extensive farming, animals may be left to run free without supervision for many months at a time and only subject to occasional mustering. To be practical, the level of care and responsibility expected of the person in charge of the animals needs to reflect the level of involvement that the person actually has with the animals.

We also agree with the concept of using transitions and exemptions. In particular changes to farming systems can generally be managed much more effectively where a sufficient transition period is available, which the proposed change would allow.

Issue 4: Role of the National Animal Welfare Advisory Group

Q12. Do you agree there is still a role for an independent committee on animal welfare?

Q13. Do you agree that the committee should be able to publish its advice at its discretion?

Q14. Do you agree that the current membership of the committee is appropriate or does it need to be changed?

Answers and comments

We have no specific comments on this issue.

Issue 5: Live animal exports

Q15. Do you agree with the proposal to create directly enforceable standards for the export of live animals?

Q16. Do you agree with broadening the purpose of the exports part of the Act so that New Zealand's reputation can be considered when making rules or deciding on applications?

Q17. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q18. What impacts will the proposal have on you and/or your organisation or sector?

Answers and comments

We agree with the proposal to create enforceable standards and with allowing New Zealand's reputation to be considered when making rules.

Our specific concerns are around the detail of the regulations and in particular the need to ensure that regulation does not undermine New Zealand's competitiveness, appropriate
hand-overs of responsibility and appropriate transition arrangements. Potential things that will need to be considered are:

1. The standard needs to recognise that while provision is made for unexpected eventualities, on an international sea voyage it is not feasible to fully provide for all possible situations.
2. The standard will need to be clear at what point the voyage is deemed to be complete and the animals fall outside of New Zealand jurisdiction. This will need to be set with reference to the approach of key competitors such as Australia to ensure that the New Zealand requirements are not more onerous.
3. Existing contracts for livestock export can run over several shipments and multiple years. In the event regulatory changes impact on the nature of these contracts, any transitional periods will need to either be sufficiently long to allow these contracts to be completed or allow for a specific exemption.

Issue 6: Significant surgical procedures

Q19. Do you agree with the proposals to change who can perform significant surgical procedures under veterinary supervision?
Q20. Do you agree that the Act should allow for mandatory conditions to be placed on controlled surgical procedures?
Q21. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q22. Are there any other ways the system should be improved?
Q23. What impact would the proposed changes have on you and/or your organisation or sector?

If you have a view on any of the procedures described in section 4.7.5 of the consultation document, please indicate how you think they should be classified:
- Not significant: can be carried out by anyone.
- Significant: may only be carried out by a veterinarian or a person who is acting under the direct supervision of a veterinarian and who is being taught veterinary science at undergraduate level.
- Restricted: as for significant surgical procedures plus may only be carried out if the procedure is in the animal’s interests and using appropriate pain relief.
- Controlled: as for significant surgical procedures plus may also be carried out by the owner of an animal, or their employee with written veterinary approval.
- Prohibited: no one may carry out the procedure.

Answers and comments
We support the principle to broaden who can perform the various categories of surgical procedures as outlined in the proposal.

Issue 7: Reporting of animals killed for research, testing or teaching

Q24. Do you agree that the number of animals killed humanely for research, testing and teaching should be included in official statistics?
Q25. What impact, including costs, would the requirement to report animals killed for use in research, teaching, and testing have on you or your organisation?
Q26. Can you think of any other changes that would improve the system for regulating animals used in research, testing and teaching?

Answers and comments
We do not agree with the changes proposed to this part of the Act and believe the existing exclusion which allows for the killing of an animal, provided that it "does not suffer unreasonable or unnecessary pain or distress" should be retained. Our particular concerns are:

1. Within agriculture the distinction between an animal killed for meat production and one killed in an equally humane manner is relatively minor and, increasingly there is a research component to the carcass measurement which is undertaken on every animal processed through commercial meat processors.

2. It is unclear what the test to demonstrate benefit from the research or teaching will accomplish. In reality, animals in agricultural are very valuable and are only killed for teaching or research purposes because they satisfy this requirement – making the test explicit will not change outcomes.

3. The greatest difficulty likely to be faced on reporting on animals used in research and teaching and regulating this activity is likely to be one of education of people involved. Animals are traded as a commodity in agriculture and the distinction between animals killed for meat production, versus those killed for research or teaching will in many cases be a minor distinction and not one that will be necessarily be meaningful for those involved in these activities.

Issue 8: Enforcement tools

Q27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?

Q28. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

Q29. What impact would the proposal have on you and/or your organisation or sector?

Answers and comments

As outlined earlier, our key concerns would be to recognise that in agriculture, other than in cases of animal cruelty, there is no motive for farmers to deprive animals of the care they need to thrive and where this care is absent it is generally due to other factors at play. Therefore the compliance regime needs to be aimed at ensuring support is provided rather than penalties issued. In this regard our specific concerns are:

1. The aim should be on helping ensure appropriate assistance is sought rather than on issuing penalties. Penalties should only be used where people are deliberately not seeking the help needed.

2. Care needs to be taken to ensure that the threat of penalties and prosecution does not stand in the way of people seeking helping. The risk is that a poor animal welfare situation could be worsened if people are fearful of the legal consequences.

3. Specific care needs to be taken around the issue of compliance orders and we would be concerned if these could be issued without the opportunity for representation from the animal owner given the subjectivity involved in assessing many issues of animal welfare and the irreversible nature of some actions which could be required.

Issue 9: Other proposed offences

Q30. Do you agree with the proposal to make drowning a land animal an offence?

Q31. Do you agree with the proposal to clarify that wilful and reckless ill-treatment offences apply to animals in a wild state?
Q32. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

**Answers and comments**

We have no comments on this section.
Issue 10: Technical amendments

Q33. Do you have any comments on any of the technical amendments proposed in Table 1?

Answers and comments

Issue 1: The proposal in the first issue provides for the Crown to recover costs. It is not clear from the context whether the proposal is seeking that the Crown recover the costs of caring for the animals or the costs of investigation and legal action.

Issue 8: The proposal seeks to remove “where practicable” on the basis that there is already a defence is all reasonable steps have been taken. We do not believe that these tests are equivalent and believe that the “where practicable” test should remain.

Any other comments

Q34. Do you have any other comments or feedback not covered by these questions?

Answers and comments

We have no further comments
## ANIMAL WELFARE MATTERS:
Proposals for a New Zealand Animal Welfare Strategy and Amendments to the Animal Welfare Act 1999

### Personal Information

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<td>Poultry Industry Association of New Zealand (PIANZ) &amp; Egg Producers Federation of New Zealand (EPFNZ).</td>
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PIANZ and the EPF are the trade associations representing, respectively, the New Zealand poultry meat processing industry and the commercial layer farm industry.
Issue 1: New Zealand animal welfare strategy

Q1. Do you have any overall comments or feedback about the proposed strategy and its approach?
Q2. What are the risks and benefits of adopting this strategy? Can you think of any missed opportunities or unintended consequences?
Q3. Do the values reflect New Zealanders' views about animal welfare? Would you suggest something else and why?
Q4. Do you have any comments on the proposed approaches, leadership roles, or Government priorities?

Answers and comments

Q1. The Animal Welfare Strategy diagram set out on page 3 of the Discussion Paper no. 2012/07 sets out values and outcomes. We agree with the values and the outcomes. Four proposals are set out to improve animal welfare. It is the view of PIANZ and EPF that stockmanship is the key element in improving animal welfare, and it is our submission that this is not given enough weight in the Animal Welfare Strategy. It is recognised under the heading “Industry Leadership” and the roles required, but once again we do not believe that stockmanship is given the importance and status that it deserves.

Effective stockmanship is at the heart of good livestock farming and this has at times got lost under the welter of pressure from advocacy groups whose primary preoccupation is farming regimes rather than farming practice.

PIANZ and EPF agree with the other roles set out. The strategy document sets out a series of bullet points as to how it will be known that the strategy is working. In our view the outcomes are good, but there may be a vast underestimation of the complexity of measurement of those outcomes. We submit that further work is required in this area.

We do have a concern that the principle of partnership is not as strong as we believe it should be. To ensure a new Zealand animal welfare strategy works as well as it should, there must be understanding of industry activities and successes. In the last ten years many industries have made significant progress, and the poultry industries are no different. There has been a major commitment to industry training, e.g. poultry meat companies require every farmer to have an AgITO-qualified person involved in animal management. The EPF set up a million-dollar project looking at all the welfare and production issues related to colony systems in New Zealand. The poultry meat industry has had ongoing involvement in major animal welfare reviews undertaken by AgResearch on behalf of MPI. These all show a major commitment to animal welfare.

Q2. PIANZ and EPF note that participation in setting animal welfare standards is seen as a role requiring collaboration. We believe this currently works well in the NAWAC process and have major concerns about whether the proposed changes will diminish this participation.

In respect of Government leadership, PIANZ and EPF believe that not only should Government set and maintain mandatory animal welfare standards, but they should also publicly promote and defend those standards. There is reference to industries leading the promotion of best practice. PIANZ and EPF believe that best practice will work where there is a clear commercial benefit. To expect an uptake of best practice with potential commercial loss to farmers is not only unrealistic, but would be very disruptive.
Q3. We support the values set out in the strategy. We question some of the wording, e.g. “better care of animals”, “improved welfare”, “improved compliance”, and believe that phrases such as “good care”, “assurance of welfare” and “evidence of compliance” are more appropriate.

Q4. Asking industry to implement schemes to improve welfare will work best when there is a commercial advantage or a regulatory requirement to improve welfare. To expect otherwise is unrealistic. We strongly support the Government acts rapidly and appropriately when standards are breached.

**Issue 2: Standards for care and conduct towards animals**

Q5. Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines?
Q6. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?
Q7. What impact will the proposed changes have on you and/or your organisation or sector?

**Answers and comments**

Q5. We believe this issue needs very careful thought. The driver appears to be two considerations: one, the length of time that Codes of Welfare have taken – e.g. the Layer Hen Code was expected to be released in 2009 and it now appears it will be late 2012 – and secondly, the enforceability of Codes. There has been a considerable investment in the Code’s concept by industry by way of participation and education of members. Therefore it is our submission that a replacement of Codes of Welfare should only take place if it addresses the key issues above. In our view an alternative option for the time taken for Code development would be to ensure NAWAC has more resources and is itself better advised rather than relying on the members of NAWAC to totally inform themselves.

In terms of enforceability, there are key items within a Code, e.g. timelines, that could be enforceable, but it does not require all elements of the Code to be enforceable. This could address the current concerns in relation to Codes of Welfare. It appears that the only alternative on enforcement is the option of regulations. More detail is needed on the proposal of a mix of directly enforceable standards and guidelines. We would favour retention of the current codes as the guidelines and key elements used to establish a regulatory regime.

The paper refers to Codes being replaced by regulations and guidelines, i.e. option 3, whereas on balance the industry thinks that option 2 might be preferable, i.e. making elements of the Code directly enforceable. Regulations could mean less flexibility.

When the industry looks at the issues in enforceability the major area of concern is where a time-defined requirement, i.e. new doors on cages in 2008, has not been met by a very limited number of farmers, but no enforceability action is taken. This is the area of enforceability we would like to see undertaken. The industry has concerns that other areas could be difficult to easily enforce, particularly if they are outcome-based rather than prescriptive.

Q6. Regulations potentially could be subject to political pressure and it is critical, in this highly-emotive topic, that animal welfare decisions are based on good science.
Q7. This will require a re-education process of farmers if Codes are replaced. It is really only in the last 5 years that the Code concept has gained real understanding, and to change now may not be a positive outcome for animal welfare.

Issue 3: Criteria for developing standards

Q8. Would the proposals to add “practicality” and “economic impact” to the set of criteria improve the decision-making process, or would you suggest something else?
Q9. Do you agree that having “transitions” and “exemptions” is a better way to handle the situations that currently fall under “exceptional circumstances”?
Q10. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q11. What impact would the proposed changes have on you and/or your organisation or sector?

Answers and comments

Q8. We believe practicality and economic impact are important. They must be taken into account if welfare standards are to be relevant and accepted by those to whom they apply. Significant changes in the layer industry, for example, could result in a total change to the structure of that industry. Uncertainty around regulations creates risk and smaller operators are less willing to accept that risk and may exit the industry.

Q9. We agree with “transitions” and “exemptions”. For example the change from current cages to other options for the layer hen industry must provide a transition process, otherwise a sector of industry supplying 85% of New Zealand’s eggs cannot operate. Mechanisms are required that are sensitive to particular situations. Transitions that are a “blunt instrument” can be very harmful. In our view “transitions” and “exemptions” is more appropriate than the current “exceptional circumstances”.

Q10. See above in Q8 and Q9.

Q11. We believe that to date “practicality” and “economic impact” are issues that have been taken into account, but to have it explicitly stated is more appropriate than the current position.

Issue 4: Role of the National Animal Welfare Advisory Group

Q12. Do you agree there is still a role for an independent committee on animal welfare?
Q13. Do you agree that the committee should be able to publish its advice at its discretion?
Q14. Do you agree that the current membership of the committee is appropriate or does it need to be changed?

Answers and comments

Q12. We believe the current role of an independent committee on animal welfare works well. Consultation with industry allows for a good understanding of animal welfare practice and stockmanship, and a New Zealand specific perspective. This New Zealand perspective is important as international evidence may not be applicable. The current process means that NAWAC is “tethered to reality” in terms of its decision-making process, in our view. If NAWAC did not have to measure its proposals against reality, it could lead to an unrealistic perspective. We think that the
current process works well, while still ensuring there is an independent committee on animal welfare.

Q13. If the committee is to publish its advice at its discretion, it should do so once that advice has been peer reviewed and industries are able to comment and, if necessary, challenge, the advice as it relates to industry species if they believe that advice is not valid. Only once that process has been completed should the committee be able to publish its advice at its own discretion. We have a concern that if this is the full extent of their role, then there is a real danger that their advice may become detached from the day-to-day reality of farming. To be effective NAWAC needs to closely associate itself with the industry whilst maintaining its independence.

Q14. The current membership of the committee is fundamentally good, but where the committee is commenting on the specific species, then industry should be able to nominate an industry representative to be part of that committee. For example, in the development of all poultry Codes of Welfare, there has been no poultry representative on the committee. As the committee’s role and practice is currently structured, that has not been a major issue, but if the role of the independent committee was to change, then having an industry-specific representative is necessary, in our submission.

**Issue 5: Live animal exports**

Q15. Do you agree with the proposal to create directly enforceable standards for the export of live animals?

Q16. Do you agree with broadening the purpose of the exports part of the Act so that New Zealand’s reputation can be considered when making rules or deciding on applications?

Q17. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q18. What impacts will the proposal have on you and/or your organisation or sector?

**Answers and comments**

Q15. Yes. The export of live breeding stock is a source of significant revenue for the hatchery sector of the New Zealand poultry industry. New Zealand poultry is seen as high quality, valuable birds. The exporters are very experienced in the requirements for transport. We support the tightening of requirements, but would not support an overly complex regulatory regime.

Q16. Yes. We would seek more information.

Q17. Excessive compliance costs are a potential risk.

Q18. Exports are an important source of income for the wider poultry industry, and therefore any proposals must ensure that they continue while meeting the required standards.

**Issue 6: Significant surgical procedures**

Q19. Do you agree with the proposals to change who can perform significant surgical procedures under veterinary supervision?
Q20. Do you agree that the Act should allow for mandatory conditions to be placed on controlled surgical procedures?
Q21. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q22. Are there any other ways the system should be improved?
Q23. What impact would the proposed changes have on you and/or your organisation or sector?

If you have a view on any of the procedures described in section 4.7.5 of the consultation document, please indicate how you think they should be classified:
- Not significant: can be carried out by anyone.
- Significant: may only be carried out by a veterinarian or a person who is acting under the direct supervision of a veterinarian and who is being taught veterinary science at undergraduate level.
- Restricted: as for significant surgical procedures plus may only be carried out if the procedure is in the animal's interests and using appropriate pain relief.
- Controlled: as for significant surgical procedures plus may also be carried out by the owner of an animal, or their employee with written veterinary approval.
- Prohibited: no one may carry out the procedure.

**Answers and comments**

Q19. This is not an issue relevant to the New Zealand poultry industry. Game poultry issues will be addressed by persons involved in that industry.

Q20. This is a matter that needs to be dealt with on a case-by-case basis.

Q21. See answers to 19 and 20 above.

Q22. See answers to 19 and 20 above.

Q23. See answers to 19 and 20 above.

**Issue 7: Reporting of animals killed for research, testing or teaching**

Q24. Do you agree that the number of animals killed humanely for research, testing and teaching should be included in official statistics?
Q25. What impact, including costs, would the requirement to report animals killed for use in research, teaching, and testing have on you or your organisation?
Q26. Can you think of any other changes that would improve the system for regulating animals used in research, testing and teaching?

**Answers and comments**

Q24. Yes. The poultry industry offers no comment in response to these questions.

Q25. The poultry industry offers no comment in response to these questions.

Q26. The poultry industry offers no comment in response to these questions.
Issue 8: Enforcement tools

Q27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?

Q28. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

Q29. What impact would the proposal have on you and/or your organisation or sector?

Answers and comments

Q27. In principle PIANZ and EPF agree with the proposals. There would need to be considerable discussion as to which offences the instant fine concept would apply to.

Q28. If animal welfare inspectors are given the ability to issue compliance orders, this will need thought around registration and the criteria required for this power to be used. Enforcement must be carried out by animal welfare inspectors who are familiar with the industry. Experience with regulatory body auditors in other areas such as food safety shows that consistency of approach is a major problem. This can lead to major frustration from farmers and must be addressed.

Q29. The EPF believes this proposal would ensure enforceability for that very limited number of farmers not meeting current Welfare Code requirements. This has benefits for the animals and for the industry. However, it is subject to the concerns raised in Q28 above.

Issue 9: Other proposed offences

Q30. Do you agree with the proposal to make drowning a land animal an offence?

Q31. Do you agree with the proposal to clarify that wilful and reckless ill-treatment offences apply to animals in a wild state?

Q32. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Answers and comments

Q30. The poultry industry has no specific comment on this issue.

Q31. As a commercial organisation we do not see it as appropriate to comment on this.

Q32. See above Q30 and Q31.
Issue 10: Technical amendments

Q33. Do you have any comments on any of the technical amendments proposed in Table 1?

Answers and comments

Q33. We believe that there does need to be clarification of the Animal Welfare Act for suspension of investigators and auxiliary officers until there is an investigation outcome on a complaint or suspected misconduct.

We agree that MPI Animal Welfare Inspectors should be appointed directly under the Animal Welfare Act.

We agree with the amendment to the Act to allow the Director General to audit an organisation approved under s121 or s189 of the Animal Welfare Act.

We agree with the proposal for removing NAWAC and NAEAC from being subject to the Local Government Official Information and Meetings Act.

Any other comments

Q34. Do you have any other comments or feedback not covered by these questions?

Answers and comments

Q34. The proposed concept of regulations is currently very unclear to industry and, we believe, even to the Ministry at this point. There is a concern that a frustration on lack of enforcement of some requirements in Codes of Welfare is leading to a proposal that changes many fundamental elements of the current system. If it is not broken, does it need surgery of this magnitude to fix it?
Hon David Carter  
Animal Welfare Strategy and Legislation Review  
Ministry for Primary Industries  
PO Box 2526  
Wellington 6140  

28 September 2012  

Dear Minister,  

Submission on the proposed changes to the Animal Welfare Act 1999  

Project Jonah is a marine mammal protection organisation that represents the views of more than 10,000 New Zealanders. As part of the review and public consultation process, we would like to take this opportunity to comment on the proposed changes to the Animal Welfare Act 1999.

As an organisation dedicated to the welfare and protection of marine mammals, we are disappointed that the proposed changes to the Animal Welfare Act do not address the issue of marine mammal captivity.

Many countries around the world already have legislation prohibiting the taking, holding, importing and exporting of dolphins. Mexico, Cyprus, Hungary, India and Malaysia have all banned the import or export of dolphins, or both, and Chile, Costa Rica, Croatia and Cyprus have also banned the keeping of these animals in captivity.

Whilst we do not currently hold any cetacean species in captivity, the practice is not yet prohibited by law in New Zealand. However, we now have the chance to rectify this. The Government has already expressed support for the idea. In 2010, Kate Wilkinson, Minister of Conservation, said, “Whales and dolphins should not be brought into or bred in captivity in New Zealand or exported to be held in captivity, except where this is essential for the conservation management of the species.” A statement consistent with the Department of Conservation’s ‘Conservation General Policy 4.4k’
The case against captivity has been widely documented and is supported by a growing number of scientists and society as a whole. The more we learn about marine mammals, the more evidence there is that captivity is unacceptably cruel.

The impression of happy animals performing for treats is giving way to recognition of behind-the-scenes suffering. As news gets out about traumatic captures, barren concrete tanks, high mortality rates and abnormal—even dangerous—animal behaviour, people are changing the way they ‘see’ the captive display industry. More and more people are recognising that a pool cannot possibly replicate the vast ocean these marine mammals would naturally inhabit and it certainly cannot meet their complex physical, behavioural and social needs.

With the release of television documentaries like *The Cove*, captive facilities are finding it increasingly difficult to argue the educational or conservation benefits of their facilities. Some in the display industry recognize the growing sentiment that human exposure to captive marine mammals does exactly the opposite of what the industry rhetoric claims: instead of sensitising people to marine mammals and their habitats, it desensitises them to the cruelty inherent in removing wild animals from their natural habitats and holding them in captivity. The president of the Zoological Society of Philadelphia stated in a welcoming speech to a conference on education, “The surveys we have conducted show that the overwhelming majority of our visitors leave without increasing their knowledge of the natural world or their empathy for it. There are even times when I wonder if we don’t make things worse by reinforcing the idea that man is only an observer of nature and not a part of it”.

A more thorough examination of the issues associated with the captive display industry can be found in the attached report ‘The Case Against Marine Mammals in Captivity’. This report was produced by the Humane Society International and the World Society for the Protection of Animals. It gives evidence-driven arguments against the public display of dolphins, whales, and other marine mammals, relying substantially on peer-reviewed sources and literature from credible sources (e.g., government technical reports, professional conference proceedings) to make its points.

The scientific and ethical arguments against the keeping of marine mammals in captivity are irrefutable and as such, we ask that the Animal Welfare Act 1999 be amended to:

1. Explicitly ban the keeping of cetaceans in captivity
2. Explicitly ban the use of marine mammals in circuses
3. Prohibit the keeping or importation of marine mammals by zoos unless they form part of a valid welfare and/or conservation programme, the objective of which is the eventual rehabilitation and release of the animals back to the wild, and their
rehabilitation in a semi-wild environment which meets their physiological and
behavioural needs

As humans, we can debate, argue and intellectualise that captivity serves a valuable function,
or that some aspects of the captive experience are less damaging to the animals than others.
However, if animal welfare truly matters, we need to view the captive experience in totality and
in doing so realise that for marine mammals the captive experience is so contrary to what is
natural for them, that it should be rejected outright.

Like you, we believe that animal welfare matters. It matters for its own sake because animals
feel pain and distress. It matters because how we treat animals says a lot about us as a society.
It matters because our trading partners and consumers want us to do the right thing by our
animals. These are your words, not ours, and we whole heartedly agree.

Animal welfare is too important to get wrong so we look forward to a more positive future for
New Zealand’s animal welfare system and better protection for all animals in New Zealand,
including marine mammals.

Kind regards

Chief Executive Officer
Project Jonah New Zealand
THE CASE AGAINST
Marine Mammals
in Captivity
THE CASE AGAINST

Marine Mammals
in Captivity
Overview

In the debate over marine mammals in captivity, the public display industry maintains that marine mammal exhibits serve a valuable conservation function, people learn important information from seeing live animals, and captive marine mammals live a good life. However, animal protection groups and a growing number of scientists counter that the lives of captive marine mammals are impoverished, people do not receive an accurate picture of a species from captive representatives, and the trade in live marine mammals negatively impacts populations and habitats. The more we learn of marine mammals, the more evidence there is that the latter views are correct.

The public display industry has asserted for many years that the display of marine mammals serves a necessary educational purpose, for which the animals’ welfare need not be compromised. Mostly, this assertion has gone unchallenged. But as news gets out about traumatic captures, barren concrete tanks, high mortality rates, and aberrant—even dangerous—animal behavior, people are changing the way they “see” animals in captivity.

Some facilities promote themselves as conservation enterprises; however, few such facilities are involved in substantial conservation efforts. Rather than enhancing wild populations, facilities engaged in captive breeding tend merely to create a surplus of animals who may never be released into the wild and are therefore only used to propagate the industry.

Contrary to popular perception, captures of wild marine mammals are not a thing of the past. Live captures, particularly of dolphins, continue around the world in regions where very little is known about the status of populations. For smaller stocks, live capture operations are a significant conservation concern. Even for those stocks not currently under threat, the lack of scientific assessment or regard for welfare makes the proliferation of these operations an issue of global concern.

The public display industry maintains that it enhances the lives of marine mammals in captivity by protecting them from the rigors of the natural environment. The truth is that marine mammals have evolved physically and behaviorally to survive these rigors. For example, nearly every kind of marine mammal, from sea lion to dolphin, travels large distances daily in a search for food. In captivity, natural feeding and foraging patterns are completely lost. Stress-related conditions such as ulcers, stereotypical behaviors including pacing and self-mutilation, and abnormal aggression within groups frequently develop in predators denied the opportunity to hunt. Other natural behaviors, such as those associated with dominance, mating, and maternal care, are altered in captivity, which can have a substantial impact on the animals.

Wild-caught marine mammals gradually experience the atrophy of many of their natural behaviors and are cut off from the conditions that allow the expression of cultural traits such as specialized vocalizations and unique foraging techniques. Viewing captive animals gives the public a false picture of the animals’ natural lives. Worse yet, it desensitizes people to captivity’s inherent cruelties—for so many captive marine mammals, the world is a tiny enclosure, and life is devoid of naturalness.

Children learn to view dolphins as dependent on humans—rather than as competent and independent—when their only exposure to these animals is in captivity. Photo: ©istockphoto.com/Zak Brown
Public display facilities often promote themselves as stranding and research centers. In fact, most stranded marine mammals, especially whales and dolphins, die after they are rescued; few survive rehabilitation to be released to the wild; many releases are not monitored for success; and some animals, despite their suitability for release, are retained for public display. As for research, most studies using marine mammals in public display facilities are focused on improving captive care and maintenance practices—very few of them address crucial conservation questions.

With any marine mammal exhibit, the needs of the visiting public come before the needs of the animals. Enclosures are designed to make the animals readily visible, not necessarily comfortable. Human-dolphin interactions such as swim-with-the-dolphins encounters and so-called petting pools do not always allow the animals to choose the levels of interaction and rest they prefer or need. This can result in submissive behavior toward humans, which can affect the dominance structure within the dolphins’ own social groups. Furthermore, petting pool dolphins, who are fed continuously by the visiting public, can become obese and are at risk of ingesting foreign objects.

The public display industry fosters a benign—albeit mythical—reputation of marine mammals, particularly dolphins. This constitutes a form of miseducation. These species are for the most part carnivores with complex social hierarchies and are perfectly capable of injuring fellow group members, other marine mammals, and humans. The risk of disease transmission in both directions (marine mammal to human and human to marine mammal) is also very real. Marine mammal handlers have reported numerous health problems related to their work.

The ethical concerns raised by marine mammal captivity are especially marked for dolphins, as they may well merit the same moral stature as young human children. Although public display advocates will argue that claiming dolphins have “rights” is based solely on emotion and that these marine mammals are no different from other wildlife species in captivity, in fact the behavioral and psychological literature abounds with examples of the sophisticated cognition of dolphins. Their intelligence appears at least to match that of the great apes and perhaps of human toddlers—they are self-aware and capable of abstract thinking.

Fierce debate continues over the issue of mortality rates and longevity, especially of whales and dolphins, in captivity. The most conclusive data are for orcas; their annual mortality rates are significantly higher in captivity than in the wild. The mortality data related to live captures are more straightforward—capture is undeniably stressful and, in dolphins, results in a six-fold increase in mortality risk during and immediately after capture.

In this document, The Humane Society of the United States (The HSUS) and the World Society for the Protection of Animals (WSPA) employ scientific and ethical arguments to debunk the myths about marine mammals in captivity. And while humans can subdivide the captive experience and even conclude that one aspect is more or less damaging to the animals than another, the totality of the captive experience for marine mammals is so contrary to their natural experience that it should be rejected outright. The HSUS and WSPA believe it is wrong to bring marine mammals into captivity for the purpose of public display.
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Introduction

When drafting the Marine Mammal Protection Act of 1972 (MMPA), members of the U.S. Congress believed, or were lobbied into promoting, the long-accepted view that the public display of animals (at facilities such as zoos and aquaria) serves a necessary educational and conservation purpose. Subsequently, many domestic statutes and regional and international agreements incorporated a similar viewpoint, and wherever “take”—such as capture—was prohibited, an exemption for education and conservation was included. These domestic laws and international agreements often include specific provisions that support the holding of marine mammals in captivity for the purpose of public display.

This platform was adopted without the benefit of scientific research. In fact, it has only been in the last decade or two that research efforts have caught up with and begun to rebut the claims made by those who are marketing and making a profit from captive marine mammals. With this greater understanding of the needs of marine mammals and the conditions of their captivity, the public has become skeptical of assertions that the display of captive marine mammals, particularly cetaceans (whales, dolphins, and porpoises), fosters an understanding of these species and has begun to ask if facilities are able to meet even the most basic needs of these complex animals. Indeed, many believe that public display is no more than commercial exploitation of captive ani-

The grace and beauty of orcas are showcased when they perform in captivity, but the setting is artificial and stifling for them. The true magnificence of these animals is fully realized only in their natural habitat. Photo: BigStockPhoto/Sergey Karpov
mals and that traumatic captures, concrete tanks, and forced confinement are inhumane. Rather than having a positive effect on education and conservation, some consider the effect of marine mammal displays to be negative. The HSUS and WSPA agree.

In the United States, the MMPA requires the Department of Commerce’s National Marine Fisheries Service (NMFS) to maintain life history records on most marine mammals held in dolphinaria—facilities that use captive dolphins and other marine mammals primarily in shows—and aquaria—facilities that use captive marine mammals primarily in exhibits—in the United States and in foreign facilities that trade with U.S. facilities. These records chart a history of disturbing causes of death, high mortality rates, and low birth rates. The public display industry claims that this history reflects the learning curve involved in understanding marine mammal care and that future scientific analyses of life history parameters will show an improvement in these statistics. The HSUS, WSPA, and other animal protection advocates maintain that this history clearly indicates that marine mammals do not adapt well to captivity.

Tricks such as tossing balls to trainers are typical stunts in dolphin performances. This demonstrates a dolphin’s dexterity but is hardly a natural behavior. Photo: ©Painet, Inc./Spencer Grant

money, technology, and expertise are often lacking. The information that is available suggests that survival of captive marine mammals outside North America and Europe is very poor indeed.

However, there is more to consider in this debate than life history statistics. Length of life is one thing and quality of life is another. At issue is not simply whether marine mammals live as long in captivity as they do in the wild. What must also be considered are, first, whether the lives marine mammals lead in captivity are merely different from those they lead in the wild or worse; second, whether public display of marine mammals is educating people about these animals; and third, whether public display fosters or actually impedes conservation efforts. The public display industry maintains that captive marine mammals live good lives, people learn valuable information from seeing live animals, and dolphinaria and aquaria serve a valuable conservation function. However, animal protection groups and a growing number of scientists say that the lives of captive marine mammals are impoverished, people do not receive an accurate picture of a species from captive representatives, and the trade in live marine mammals negatively impacts populations and habitat. The more we learn of marine mammals, the more evidence there is that the latter view is correct.

Dolphins are easily trained because they are intelligent, but too often their intelligence is used to turn them into clowns. Photo: BigStockPhoto/Philip Lange

Internationally, there is disturbingly little information about life history parameters of captive marine mammals, as there are no international oversight mechanisms, and very few countries have any requirements for maintaining adequate animal records. Marine mammals, including a wide variety of cetacean species, are held in a growing number of countries in the developing world, where
CHAPTER 1

Education, Conservation, and Research

EDUCATION

Education is one of the most important methods of ensuring the humane treatment and conservation of the myriad other species with which we share the planet. Despite being under a legal obligation in several countries to provide an educational component in exhibits, there is little objective evidence to indicate that the public display industry is furthering the public's knowledge of marine mammals and their habitats. While a few zoos, dolphinariums, and aquaria among the more than 1,600 licensed animal exhibitors operating in the United States are involved in serious education and conservation efforts, the main purpose of these operations is to display animals for entertainment rather than to convey information.

Traditional marine mammal display centers on animals such as sea lions, dolphins, or whales performing tricks that are exaggerated variations of their natural behaviors. These tricks prevent the audience from contemplating the stark concrete and Plexiglas enclosures, so different from these species' natural habitat. Despite arguments that such entertainment makes the experience of seeing marine mammals more memorable, in a survey of 1,000 U.S. citizens by researchers from Yale University, respondents overwhelmingly preferred to see captive marine mammals expressing natural behaviors rather than performing tricks and stunts. In fact, four-fifths of the public in this survey stated that marine mammals should not be kept in captivity unless there are major educational or scientific benefits. A survey conducted in 2007 found that only 30 percent of the U.S. public believed there is a scientific benefit to keeping dolphins in captivity. In a 2003 survey of members of the Canadian public, 74 percent of respondents thought that the best way to learn about the natural habits of whales and dolphins is by viewing them in the wild, either directly through whale-watching tours or indirectly through television and cinema or on the Internet. Only 14 percent felt that viewing cetaceans in captivity was educational.

In general, almost nothing is taught at dolphinariums during marine mammal shows about natural behaviors, ecology, demographics, or population distribution. The show "Believe," recently developed for SeaWorld, focuses more on emotional showmanship and the bond between the animal and her trainer than the biology of orcas (Orcinus Orca, also known as killer whales). Indeed, the one thing that virtually all marine mammal public display facilities consistently avoid is providing in-depth educational material concerning marine mammal natural history or how the animals live and behave in their natural habitats. Furthermore, it has been demonstrated that the information facilities present is sometimes scientifically incorrect or distorted to portray the facility in a better light.

Examples of the deliberate distortion—or ignoring—of current scientific knowledge include SeaWorld's directive to staff not to use the word "evolve," as many visitors consider the theory of evolution to be controversial; its explanation of the so-called "dropping fin" syndrome; and its description of the life spans of captive orcas.

Traditional dogma states that the display of live animals is required to educate people about a species (and therefore to care about the species and its habitat). But animatronics (robots), DVDs, IMAX theaters, interactive and traditional museum-type displays, and virtual reality simulations could and should replace dolphin and sea lion shows and, in many cases, live exhibits altogether. It is true that people may respond on a basic emotional level to seeing a live animal on display, and performances may also reinforce the bond with an individual animal felt by members of the audience. But because of the nature of these performances, the perceived bond is not with an actual animal but with an idea of that animal that has been crafted by the facility.

Evaluation of the performances' scripts and settings, as well as observation of the audiences' reactions, reveal that a performance is not an educational vehicle but a show in which miseducation (in the form of inaccurate representation of such things as normal behavior, life span, appearance, and social structure) occurs more often than not. To illustrate, many actions performed by dolphins in shows or observed being directed toward visitors or trainers that are portrayed as "play" or "fun"—such as the rapid opening and
Stranded cetaceans who do not die on the beach or are not pushed back into the ocean alive may be taken into captivity for rehabilitation, where survival is uncertain. Photo: WSPA

closing of the mouth and the slapping of the water surface with the tail flukes or flippers—are actually displays that in wild animals would usually be considered aggressive, akin to a dog growling or snarling.

When public display facilities assert their educational effectiveness, they frequently cite annual attendance figures, apparently convinced that visitors learn about marine mammals simply by walking through a turnstile. In fact, the actual provision of educational materials is often limited. A recent study found that less than half of dolphinaria exhibiting orcas provided any information on conservation. More worrying, less than half provided educational materials for children or teachers.

The response that is elicited by mere exposure to live captive animals does not translate directly into practical action or even heightened ecological awareness, as public display rhetoric claims. Some in the display industry recognize this; the president of the Zoological Society of Philadelphia stated in a welcoming speech to a conference on education: “The surveys we have conducted ... show that the overwhelming majority of our visitors leave us without increasing either their knowledge of the natural world or their empathy for it. There are even times when I wonder if we don’t make things worse by reinforcing the idea that man is only an observer of nature and not a part of it.”

In fact, The HSUS and WSPA maintain that exposure to captive marine mammals does exactly the opposite of what the industry rhetoric claims: instead of sensitizing visitors to marine mammals and their habitat, it desensitizes humans to the cruelty inherent in removing these animals from their natural habitats and holding them captive. Repeated exposure to a dolphin swimming in a pool or a polar bear (Ursus maritimus) pacing in a concrete enclosure encourages people to consider wildlife as isolated objects or as servants to human needs and desires rather than as integral elements of an ecosystem with their own intrinsic value.

THE CONSERVATION FALACY

Public display facilities have increasingly promoted themselves as conservation centers, in some cases changing their names to reinforce this image. Through skillful marketing and public relations, they miss no opportunity to emphasize their role as modern ark, hedges against the extinction of endangered species in the wild. Most public display facilities, however, do no more than produce multiple generations of a limited group of species and do not maintain true conservation programs at all.

The claim that conservation is a primary purpose of the public display industry as a whole is highly misleading at best. Fewer than five to 10 percent of zoos, dolphinaria, and aquaria are involved in substantial conservation programs either in natural habitat or in captive settings, and the amount spent on these programs is a mere fraction of the income generated by the facilities.

While several zoos have programs to breed endangered species in captivity with the intention that these animals be used in restocking depleted populations, this is not the case with cetaceans. In recent years, only one facility attempted a captive breeding program for baiji or Yangtze river dolphins (Lipotes vexillifer), a species that recently became the first cetacean to be declared extinct. There have been no attempts at captive breeding for the vaquita (Phocoena sinus), a small porpoise found in Mexico that is now the world’s most endangered cetacean species. In fact, only one member of the Alliance of Marine Mammal Parks and Aquariums (AMMPA)—an industry association that represents selected dolphinaria—routinely provides funding or grants to promote the conservation of critically endangered river dolphin species.

Public display facilities with the financial resources, staff capabilities, and commitment to engage in or support conservation programs for any animal species have always been few in number. The requirements of providing the public with a satisfying recreational experience are often incompatible with those of operating a research or breeding facility (this is the reason for the development of the off-premises breeding facilities associated with a handful of zoos). The claim that conservation is a primary purpose of the public display industry as a whole is highly misleading at best. Fewer than five to 10 percent of zoos, dolphinaria, and aquaria are involved in substantial conservation programs either in natural
habitat (known as in situ) or in captive settings (ex situ), and the amount spent on these programs is a mere fraction (often less than one percent) of the income generated by the facilities. Many dolphinariums and aquaria state that they are actively involved in conservation and use this as a marketing tool or as a way to justify imports of animals. However, these conservation claims rarely stand up to scrutiny. The portrayal of captive breeding of marine mammals to meet conservation objectives is misleading; the overwhelming majority of marine mammal species currently being bred in captivity is neither threatened nor endangered.

What is worse is that many dolphinariums and aquaria, including facilities that actively market themselves as centers for conservation, are actually depleting wild populations of cetaceans. Many facilities still acquire several marine mammal species directly from the wild. Contrary to conservation principles, little serious work has been done to ascertain what effect these captures have on the populations from which these animals are taken. The individuals who may be captured but then immediately released because they are deemed unsuitable. The U.S. government requires some environmental impact analyses to be done before captures are permitted, but the analyses are generally inadequate from a scientific standpoint, and the same restrictions do not even hold in foreign waters, where only vaguely defined "humane methods" may be required. If dolphinariums and aquaria were truly concerned about conserving species in the wild, they would be dedicated to determining the effects of the capture activities on the animals left behind and to improving disruptive and stressful capture techniques (see "Live Captures"). They would also willingly submit to strict national and international regulations. They do none of these things.

In fact, the public display industry has actively lobbied to prevent the International Whaling Commission (IWC) from adopting measures to regulate directed hunts of small cetaceans (a group that includes dolphins, porpoises, and beaked whales). The IWC was originally established to regulate hunting of large cetaceans (primarily baleen and sperm whales). Currently there are few international agreements protecting small cetaceans, species that are vulnerable and, in some areas, heavily exploited; many activists, scientists, and politicians believe that the IWC should regulate the hunts and fisheries involving small cetaceans. However, the public display industry opposes this extension of IWC authority, apparently because this much-needed oversight might interfere with the display industry's ability to capture animals for its collections in various locations around the world.

**LIVE CAPTURES**

Most cetacean capture methods are extremely traumatizing, involving high-speed boat chases and swimmers violently wrestling animals into submission before hauling them onto a boat in a sling and then dumping them into shallow temporary holding tanks. All cetacean capture methods are invasive, stressful, and potentially lethal; although the method generally considered the most humane by natural resource managers is seine-netting. During a seine-net capture, dolphins are chased by small boats and then herded together and encircled by the net. Chasing and net encirclement of dolphins are extremely stressful and have led to the death or hindered the recovery of some dolphin populations. Accidents have also occurred, causing the deaths of entangled animals. The whole process is so traumatic that mortality rates of bottlenose dolphins (Tursiops truncatus) captured from the wild shoot up sixfold in the first five days of confinement. The dolphins not selected and released from the net may experience a similar risk of dying once the capture operators have left the area.

A capture method commonly used on oceanic cetaceans, such as Pacific white-sided dolphins (Lagenorhynchus obliquidens), is "hoop netting." This method takes advantage of the species' tendency to "bowride," or swim at the front of boats. The captor lowers a pole attached to a collar from the front of the capture vessel over the head of a swimming dolphin. This collar is attached to a breakaway net, and as the dolphin swims away, the animal becomes entangled. The dolphin is pulled to the side of the vessel and then hoisted aboard.

The most violent and cruel method of collecting cetaceans for dolphinariums is the drive fishery, used primarily in Taiji and Futo, Japan. This hunt involves a flock of small boats that—through producing loud noises when the crews bang on hulls or clang metal pipes together underwater—herd cetacean groups into shallow water. Some of the animals are set aside for sale to public display facilities, while the rest are killed with long knives or spear-like tools and butchered for human and pet food and other products.

Holding pools of newly captured animals may be quite primitive—no more than boxes lined with plastic tarps, with no filtration. Photo: WSPA

In the 2003/2004 season, 78 cetaceans were sold to aquaria and dolphinariums by hunters in Taiji. In 2005, a hunt involving about 100 bottlenose dolphins in Futo was revived (no hunt had taken place there since 1999 and dolphin watching is now a growing...
Standards for marine mammal care are woefully inadequate, if they exist at all. In Latin America, the Caribbean, and Asia, where captive marine mammal programs are opening at an unchecked rate, animals are often kept in deplorable conditions. Two dolphins were kept in this filthy, freshwater swimming pool for three months and were on the brink of death when discovered. (See endnote 113.) Photo: WSPA

industry, apparently solely to acquire animals for public display facilities in Japan.4 Fourteen dolphins were sold to aquaria, five were killed for "scientific studies," and at least four (and almost certainly more) were drowned in the panic and chaos of the entrapment in Futo port. The rest were released to an uncertain fate. Each dolphin slaughtered in these hunts is worth only a few hundred U.S. dollars on the open market as meat or fertilizer, but live animals fetch up to tens of thousands—the large profits from the few animals sold from each hunt help to subsidize and maintain the drive fishery and the hunters' employment.49

"As a general principle, dolphins should not be captured or removed from a wild population unless that specific population has been assessed and it has been determined that a certain amount of culling can be allowed without reducing the population's long-term viability or compromising its role in the ecosystem. Such an assessment, including delineation of stock boundaries, abundance, reproductive potential, morality, and status (trend) cannot be achieved quickly or inexpensively, and the results should be reviewed by an Independent group of scientists before any captures are made. Responsible operators (at both the capturing end and the receiving end) must show a willingness to invest substantial resources in assuring that proposed removals are ecologically sustainable." Virtually everywhere cetacean captures happen today, no such investment has occurred.

Many drive-hunted animals, of several species, are found in Japanese and other Asian dolphinaria. Ocean Park in Hong Kong obtained animals from drive fisheries in Japan while Hong Kong was governed by the United Kingdom.6 Ocean Adventures, a facility in Subic, Philippines, received a shipment of false killer whales (Pseudorca crassidens) from a Taiji drive hunt in March 2004. The person who procured these animals for Ocean Adventures was an American.60 The problem, however, is not confined to Asia—at least 20 false killer whales caught by this method were imported into the United States. However, since 1993 no permits have been issued to U.S. facilities to import cetaceans collected from Japanese drive fisheries.61

Although drive-hunted animals have not been imported into the United States for more than 15 years, the government has allowed the exporting of marine mammals caught in U.S. waters to facilities in Japan that hold drive-fishery-caught animals.62 In addition, it considered a research permit request by SeaWorld to collect reproductive and other tissues from animals captured and killed in drive fisheries.63

Aside from humane considerations, removal of animals from wild populations can have a substantial negative impact on the animals left behind. Research on bottlenose dolphins and modeling of orca societies show that certain individuals play a crucial role in holding communities together. If these individuals are removed, the group might lose cohesion and disperse.64 This dispersal could have serious survival implications for the remaining animals, as

Drive fishermen haul on a bloody net used to entrap bottlenose dolphins. Photo: Elsa Nature Conservancy
having a well-organized group is crucial when dolphins and orcas forage for food or have to defend themselves against competitors or predators.

In a 2007 survey of the U.S. public, only 11 percent of respondents believed that capturing wild dolphins for display was acceptable.\textsuperscript{17} Even the broader captive-wildlife industry disapproves of live capture,\textsuperscript{18} yet is able to provide little evidence of action to stop the practice. Captures of non-cetacean marine mammals occur only rarely today, as these species either breed relatively well in captivity (e.g., California sea lions, \textit{Zalophus californianus}) or are acquired when dependent young are orphaned in hunts or through strandings (e.g., polar bears). Thus, deliberately organized live captures for public display remain a significant problem primarily for cetaceans.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the treaty that governs international trade in wildlife species, requires an exporting country to provide a “non-detriment finding” (NDF) to support wildlife captures and trade involving certain species (including many cetaceans).\textsuperscript{19}

Bottlenose dolphins panic and thrash in their own blood, as snorkelers search for young, uninjured animals for sale to dolphinaria. Photo: Elsa Nature Conservancy

An NDF is supposed to demonstrate that “export will not be detrimental to the survival of that species” and is meant to be based on scientific studies of the abundance and status of the wild stock from which animals are taken, as well as a scientific assessment that shows that removing the animals will not cause the stock’s depletion.

Despite this requirement, over the past few years there have been increasing numbers of cetaceans captured from the wild for public display facilities, accompanied by NDFs that are not scientifically substantiated and do not satisfy the intent of CITES in requiring NDFs.\textsuperscript{19} These captures have been very controversial, in part because no consideration was given to the impact of these removals on the wild populations. This is now considered a critical conservation issue; the International Union for Conservation of Nature’s (IUCN) 2002–2010 Conservation Action Plan for the World’s Cetaceans states:

As a general principle, dolphins should not be captured or removed from a wild population unless that specific population has been assessed and it has been determined that a certain amount of culling can be allowed without reducing the population’s long-term viability or compromising its role in the ecosystem. Such an assessment, including delineation of stock boundaries, abundance, reproductive potential, mortality, and status (trend) cannot be achieved quickly or inexpensively, and the results should be reviewed by an independent group of scientists before any captures are made. Responsible operators (at both the capturing end and the receiving end) must show a willingness to invest substantial resources in assuring that proposed removals are ecologically sustainable.\textsuperscript{20}

Virtually everywhere cetacean captures happen today, no such investment has occurred.
This is one of the glaring loopholes of the current CITES NDF structure—as long as the exporting country certifies that the trade follows scientific principles (with no independent verification) and breaks no national or local laws, no CITES violation occurs. The fact that CITES does not have any oversight or review mechanisms to determine the validity of an NDF—many of which are often revealed as faulty or at least questionable after the trade has taken place—is one of the reasons an increasing number of member nations are calling at a minimum for an end to trade with non-member countries.

**Bottlenose dolphins**

A primary "hot spot" for bottlenose dolphin captures is the Caribbean. Cuban authorities have issued capture permits for, on average, 15 bottlenose dolphins per year from national waters and for as many as 28 dolphins in one year.27 To date, there have been no reported population estimates or completed assessments of the stocks of cetaceans in the coastal waters of Cuba, nor any studies to determine whether these removals are sustainable or whether they are having an impact on Cuban dolphin populations.28 Many of these animals have been sold to other facilities in the Caribbean (with others being exported to Europe and Mexico),29 yet clearly any NDF Cuba has issued to support this trade has no substance behind it. Therefore, exports of dolphins from Cuba should theoretically be prohibited under international regulations; however, they continue unchallenged.

The issue of the Cuban dolphin trade raised concerns at the IWC, where the Scientific Committee stated that "there is currently no basis for assessing the sustainability of these takes as no abundance data were available for Cuba."30 The IUCN Cetacean Specialist Group (CSG) has also identified the investigation of live-capture of bottlenose dolphins from Cuba as one of its priority projects, due to concerns about the potential for depletion of coastal stocks of these animals. Similar concerns were also voiced for catches of coastal bottlenose dolphins in Mexican waters in the Gulf of Mexico.31 The IUCN CSG has recommended that, at a minimum, 50 genetic samples (through biopsy sampling) and at least three complete surveys (using appropriate scientific methods) must be done before the status of these animals can be determined, and therefore before any captures should be considered.32

Even members of the public display industry have expressed their concerns about the trade in Cuban dolphins. The director of the Dolphin Academy, a dolphinarium on the island of Curaçao in the Caribbean, expressed outrage when her co-tenants on the island, Curaçao Sea Aquarium, proposed an import of six Cuban dolphins. She called the import "immoral" and worried that association by proximity with these captures would bring her facility into disrepute. However, the import went ahead, with one dolphin dying soon after transfer, and newspaper articles reported that the director was fired for speaking out against the trade.33

Many members of the general public believe captures of wild cetaceans are a thing of the past, encouraged in this mistaken belief by the public display industry. Indeed, in the United States there have been no captures of bottlenose dolphins from the wild since 1989.34 However, captures are increasing in other parts of the world—recent examples include one in December 2000, when eight bottlenose dolphins were captured off the Pacific coast of the Baja California Sur peninsula. They were then transported to the Dolphin Learning Center dolphinarium at the La Concha beach resort in La Paz, Mexico, on the peninsula's Sea of Cortez side. In another incident, in August 2002, eight bottlenose dolphins were captured from the coastal waters of the Parque Nacional del Este (National Park of the East) in the Dominican Republic and sent to a local facility, Manatí Park. A third capture occurred over several months in 2003, when entrepreneurs in Solomon islands...
took advantage of a period of government instability and caught a minimum of 94 bottlenose dolphins for international trade to dolphinaria (there were at that time no local public display facilities in Solomon Islands). The last known large-scale bottlenose dolphin capture was in summer 2007, again in Solomon Islands, which has issued capture permits to several operators and established a capture/export quota of 100 dolphins per year.8

Other recent bottlenose dolphin captures in the Caribbean region include eight taken in Haiti (six survivors were released almost immediately, after public protest) and 10–14 captured in Guyana, both captures occurring in 2004.9 Researchers attending the 2006 meeting of the Small Cetaceans Sub-Committee of the IWC’s Scientific Committee reported illegal trade and capture activities involving 12 dolphins in the Gulf of Paria, Venezuela, in May 2004 (some of the dolphins captured in Guyana were almost certainly among the animals confiscated in Venezuela) and 15 dolphins in March 2005 near Roston Island, Honduras; the ultimate disposition of those 27 animals (released, died, retained, or exported) was not reported.10 The sustainability of these captures was not assessed before they took place.11

On a more positive note, at the 2002 CITES Conference of the Parties, the nation of Georgia managed to get a zero quota adopted for the commercial export of wild-caught Black Sea bottlenose dolphins.12 Between 1990 and 2001, about 120 live Black Sea bottlenose dolphins were traded across national borders for public display, with Russia being the main exporter. This is in addition to an estimated 25 to 50 animals who are caught every year to supply local dolphinaria and aquaria in countries bordering the Black Sea. Georgia’s motivation for introducing this proposal was a growing concern about the impact of these trades on a dolphin population that had been depleted by historical culling, current high levels of pollution, and other human activities. Because exports of wild-caught animals for the lucrative international trade are now effectively prohibited (although enforcement of the export ban continues to be an issue), one stress factor on this declining population has been reduced.

Orcas

The detrimental impacts of removing animals from a population might be most clearly seen in the case of orcas in Washington State. From 1962 until it was made illegal under state law in 1976, 45 orcas were taken from the Southern Resident population in Washington State. At least 11 animals died during capture, and the surviving 34 were shipped to aquaria and dolphinaria, of which only one animal is currently alive.13 The current population is believed to have been effectively halved by these removals14 and was recently listed as endangered under the U.S. Endangered Species Act, partially because of the impacts from these removals.15

Historically, another hot spot for capture activity was Iceland—dozens of orcas were captured for foreign trade in a live-capture fishery sanctioned by the Icelandic government in the 1970s and 1980s. These captures stopped in the late 1980s, when the contro-

very surrounding live orca captures increased. They also occurred historically in the waters off Japan but ended due to local depletions in the late 1960s. Orca has not been seen off Wakayama Prefecture in Japan for 10 years when a pod was sighted in February 1997. Ten animals were captured by fishermen from Taiji, of which five, all juveniles or sub-adults, were sold to dolphinaria and aquaria and the remainder released. The animals were captured under a 1992 Japanese fisheries agency permit that allowed the take of five animals per year for “research purposes.” Within five months, two of the animals had died. A third member of the so-called “Taiji Five” died in September 2004 and the remaining two died in September 2007 and 2008 respectively.16 All live of these young animals were dead less than 12 years; this outcome is appalling in a species known to live as long as humans do.

In Russia, authorities have issued quotas for live captures of Kamchatka for the purpose of public display in every year since 2001 (these annual quotas ranged from six to 10 animals in the 2008 quota was for 10 whales). Although initial attempts at captures were unsuccessful, in September 2003, a five-meter female was successfully captured, initially for transfer to one of the Urish Aquarium’s facilities. One juvenile drowned during the capture; the female died 23 days later.17 No other successful captures have been recorded. The agencies involved in these captures have done nothing to assess what impact the takes might have had on the wild population. There is a major international collaborative project being conducted to ascertain, among other things, how many orcas inhabit this region, but at present, there is still no definitive population estimate.18

Belugas

From 1999 to 2005, Marineland Ontario in Canada imported 10 wild-caught Black Sea bottlenose dolphins (a practice recently prohibited—see “Bottlenose dolphins”) and 28 wild-caught beluga whales (Delphinapterus leucas) from Russia, for a total of 38 wild-caught animals in just six years.19 Eight more wild-caught belugas from Russia, all females, were imported in December 2008.20 As with other live captures, appropriate scientific surveys to assess the impact of the removals were not conducted, and the taking of so many females is a special cause for concern.

Marineland Ontario is still importing live-caught cetaceans, at a time when the practice of keeping cetaceans in captivity in Canada is controversial. In recent poll, approximately two-thirds of those surveyed did not support the captivity of whales and dolphins and thought that the use of captive whales and dolphins for commercial purposes in Canada should be stopped. In addition, more than half of those interviewed said they would support laws that prohibit the importation of live whales and dolphins into Canada.21
These newly captured Russian belugas are crowded into a barren holding pen like guppies in a pet store aquarium. Photo: Lloyd Hannemann

Belugas have also recently been imported (primarily from Russia) by China, Thailand, Egypt, Taiwan, Bahrain, and Turkey. Most of these countries do not have facilities capable of keeping this Arctic species at an appropriate temperature. As with Cuba and its bottlenose dolphins, Russia sees its belugas as a resource for generating hard currency—the sustainability of its capture program and the welfare of the animals are distant considerations at best.

**SPECIES ENHANCEMENT PROGRAMS**

One way dolphinaria and aquaria try to justify their existence is by claiming that they are aiding in the conservation of species through species enhancement programs; that is, breeding endangered species in captivity to someday supplement depleted wild populations. Species enhancement programs have become the focus of many zoos in the developed world, and, in fact, zoos in Europe are legally required to undertake such programs with the aim of releasing captive-bred animals into the wild.

If species enhancement programs were truly a primary purpose of dolphinaria, they would be targeting species that are at risk in the wild or are from depleted populations. However, most captive cetaceans in U.S. facilities are non-endangered orcas or bottlenose dolphins, whose populations, if depleted or endangered, may in fact owe their reduced numbers to removals by the public display industry. These species breed readily in the wild—their numbers are not limited in natural habitat by low reproductive rates but by habitat loss and other factors. There is a notable lack of conservation-priority species being bred in dolphinaria; thus, the facts do not support their claim that their captive breeding programs are for conservation purposes.

It has been estimated that, if dolphinaria were serious about breeding a captive population for conservation purposes, they would need many more individuals of most species than they typically hold to maintain the appropriate amount of genetic diversity. Rather than for conservation, cetaceans are bred merely to provide replacement stock for public display—an ongoing need given the high rate of mortality in captivity.

Finally, the core of any successful species enhancement program is the ability to reintroduce captive-bred progeny into the wild, a technique that has actually had scant success in the recovery of any threatened species and is especially unlikely to be effective for cetaceans. However, the efforts of the public display industry to prevent captive cetaceans from being released expose their conservation claims as being mere self-promotion. Indeed, the public display industry appears to be attempting to produce a "captive adapted" population of marine mammals that would over time become unfit for release to the wild.

As the capture and import of animals have become problematic from economic, logistical, and image standpoint, dolphinaria and aquaria have made captive breeding a central objective. However, if captive dolphin facilities were serious about trying to conserve the species that they possess, they would be focusing on protecting the habitats of wild populations and would actively be trying to ensure that their captive-bred animals could be reintroduced, and survive, in the wild.

Most captive-breeding programs simply ensure a supply of animals for display or trade, creating in many cases a growing number of surplus animals of questionable genetic backgrounds.

**MIXED BREEDING AND HYBRIDS**

Contrary to the conservation myth proffered by the public display industry, the captive birth of an animal does not necessarily enhance its species' prospects for survival. For example, the birth of an orca of mixed Atlantic and Pacific genetic stock is an event that has virtually no connection to the conservation of orcas or their habitat, because, among other things, the animal is genetically mixed and cannot be released into either population. Animals from populations that could not breed together in the wild due to geographic separation regularly have offspring in captivity. Even worse, cetaceans belonging to completely different species have been bred together to produce hybrids, which could not be released and have absolutely no value in terms of species conservation. Most captive-breeding programs simply ensure a supply of animals for display or trade, creating in many cases a growing number of surplus animals of questionable genetic backgrounds. These animals are poor candidates for release into the wild or, for that matter, future breeding efforts, and face uncertain futures at best.

**CAPTIVE CETACEANS AND CULTURE**

It is becoming increasingly clear that culture exists within many marine mammal populations. By "culture," we mean specialized behaviors that are taught to, and learned by, animals within the
Unfortunately, captive facilities routinely separate cetacean calves from their mothers and move them to other facilities or enclosures long before they would accumulate the skills necessary to fend for themselves in the wild.

Group or population, within and across generations. Many of these behaviors are important for the survival of the animals in the wild, such as specialized foraging techniques that allow successful prey capture in a particular ecosystem and unique vocalizations—dialects, in effect—that apparently serve to enhance group cohesion and recognition. Recent research has highlighted the importance of culture in the conservation of marine mammals, calling it a source of fundamental survival skills. It has long been known that whales and dolphins learn essential life skills from their mothers and also other group members. This is one of the reasons that cetaceans in particular, but also other marine mammal species such as walruses (Odobenus rosmarus), stay so long with their mothers—for a lifetime in the case of male orcas in several populations, for example.

Despite the importance of culture in marine mammals, captive facilities do not take this into account in the husbandry (care and maintenance practices) of their animals. This fact again refutes the arguments that captive facilities are breeding marine mammals for conservation purposes. If animals cannot learn or maintain these essential survival skills, they have little or no hope of being released into the wild. Also, because the skills are passed from adults to calves, the animals' offspring will also be doomed to lifetimes in captivity.

Unfortunately, captive facilities routinely separate cetacean calves from their mothers and move them to other facilities or enclosures long before they would accumulate the skills necessary to fend for themselves in the wild. For example, Sumar, a male orca born at SeaWorld Orlando, was separated from his mother at only 6 months of age and was moved to California when he was less than 10 months old. Similar cases have been recorded for other orcas.

But it is not just in orcas that cultural behaviors are an issue; bottlenose dolphins in captivity have actually been reported to adopt and produce sounds such as their trainers' whistles, another clear example of their natural culture being supplanted by an artificial one. The development of such aberrant behavior may preclude these animals, or their offspring, from being released into the wild. At a minimum, it makes their rehabilitation more challenging. If captive facilities were serious about the concept of species enhancement programs, they would isolate whales and dolphins from animals who are not from the same population or area and would not expose them to human-made sounds. Marine mammals would also be isolated from human contact. Most wildlife veterinarians and biologists agree that animals to be rehabilitated or reintroduced to the wild should have minimal contact with humans and should live in an environment as close to their native habitat as possible. Clearly, this also means they should not be trained to perform tricks.

Another problem with this loss of culture in captive cetaceans is the associated increase in marine mammal mortality. Female cetaceans learn essential nursing skills from their mothers and also from other females in their population, sometimes acting as babysitters for the calves of other mothers. Separating calves from their mothers or other females from their population at an early age, or forcing animals to become pregnant when too young to have learned essential skills or achieved the maturity to rear a calf, can lead to high levels of infant mortality.

THE PUBLIC DISPLAY INDUSTRY “DOUBLE STANDARD”

While the public display industry publicly touts its species enhancement programs as being a reason for its continued existence, its actions (as illustrated above) and words refute this argument. Many members of the public display industry have consistently maintained that wild-caught cetaceans held in long-term captivity, let alone captive-bred progeny, cannot be rehabilitated and returned to the wild. Husbandry and training methods and the constant exposure of the animals to humans lessen animals' chances of being released—a self-fulfilling prophecy.

To put marine mammal facility actions in this regard into context, an inter-zoo species enhancement program for a small primate, the golden lion tamarin, resulted in a nearly 20 percent increase
of the wild tamarin population within the first 10 years of the program. Thus, a total of 16 percent of all free-ranging golden lion tamarins are reintroduced captive-born animals or their descendants.\textsuperscript{42} However, throughout the decades that bottlenose dolphins have been kept in captivity, very few captive-bred animals have been released into the wild by the public display industry. In fact, we were able to document only six: four as part of a larger Australian release project on 13 January 1992,\textsuperscript{44} and two animals released in the Black Sea in 2004. However, the release of these latter two animals was controversial, due to several factors, including poor post-release monitoring.\textsuperscript{46}

Few captive whales and dolphins have been deliberately rehabilitated and released after long-term captivity.\textsuperscript{46} In several countries, animals have been released after the closure of facilities, including one bottlenose dolphin in Brazil,\textsuperscript{49} three bottlenose dolphins from U.K. facilities,\textsuperscript{44} nine dolphins in Australia,\textsuperscript{45} two dolphins in Guatemala,\textsuperscript{47} and two dolphins in Nicaragua.\textsuperscript{48} In the United States, four bottlenose dolphins have been released from captive research facilities,\textsuperscript{49} with one of the releases involving a considerable effort to monitor the fate of the animals after their release. This latter effort demonstrated scientifically that wild-caught dolphins kept in captivity can be returned to the wild. Probably the best-known released captive cetacean was Keiko, the orca from the movie Free Willy.\textsuperscript{51}

However, the releases above have primarily been from research facilities or as the result of the closure of public facilities, with the majority of the cost of rehabilitation and release being funded by academic institutions and animal protection groups rather than public display facilities. The lack of industry-backed rehabilitation and release programs for captive cetaceans or industry funding for the development of such is very marked.

In fact, the public display industry has actively hindered the efforts of those who wish to conduct the work necessary to determine successful and safe methods of returning captive cetaceans to the wild.\textsuperscript{52} If the industry's principal justification for captive breeding is to develop successful enhancement programs for current or future endangered or threatened cetacean species, then the industry should foster rehabilitation and reintroduction research rather than oppose it.

There is an economic motive for the public display industry's opposition to the rehabilitation and release of captive-bred or long-term captive cetaceans. Research might prove that cetaceans who have been long-term captives can be successfully rehabilitated, returned to the wild, and reintegrated into a social group—or even the specific families from which they were removed. If so, for humane reasons, the general public might object even more strongly to the maintenance in captivity of these intelligent, long-lived species and may advocate the release of all eligible candidates.

Two typical arguments the industry makes against subjecting captive cetaceans to the admitted risks of reintroduction are that (1) it would be unethical, inhumane, and unfair to the individual animals chosen, and (2) reintroduction has never been done before with systematic and scientific methodology and monitoring.\textsuperscript{53} Neither of these arguments stands up to scrutiny.

The first argument is hypocritical: the industry did not show the same reluctance when, for example, dozens of orcas were originally brought into captivity 40 to 45 years ago. Those animals were exposed to unknown (and in many cases fatal) risks, treated as subjects in an ongoing trial-and-error experiment. The second argument, aside from being factually incorrect, implies an industry position against all new scientific research that poses health or survival risks to living animals, even when there may be substantial benefits to the individual or to the species. On the contrary, however, the industry promotes a pro-research position (on most topics other

Keiko, star of the movie Free Willy, was captured very young, before he was able to acquire the cultural knowledge of Icelandic orcas. Photo: The HSUS
than this one), even when there are risks, arguing the benefits outweigh the costs. So once again, there is a double standard.

In the case of marine mammals, and cetaceans in particular, the behavior of the public display industry makes a mockery of alleged intentions to foster the conservation of species through species enhancement programs and captive breeding. It seems clear that what the public display industry says and what it does are two entirely different things. "Captive breeding" and "conservation" are simply buzzwords used to gain the approval of an unsuspecting public.

**ETHICS AND CAPTIVE BREEDING**

Along with the substantive arguments outlined above, one must also weigh the ethical considerations of captive breeding programs. Taking an individual from the wild for captive breeding purposes obviously raises ethical concerns. Individuals are denied freedom and exposed to stress and other risks in order to preserve an entire species. To make such programs morally justifiable, the animals being placed in captivity should be better off, or no worse, than they would be in the wild. This is not possible with regard to captive marine mammals, as exemplified by orcas, who experience shorter lives in captivity when compared to the wild (see "Chapter 9: Mortality and Birth Rates").

If habitat is being destroyed and no viable options are available for a natural migration to a protected area, then there may be an ethical justification for bringing animals into captivity. However, this again is not the case with marine mammals. Little—if any—research is conducted on the habitats from which marine mammals are removed, so it is impossible to determine their status. In addition, most marine mammals currently in captivity are, or descend from, animals from relatively undisturbed or protected habitats (such as the waters around Iceland in the case of orcas, or U.S. coastal waters in which marine mammals enjoy a variety of legal protections like the MMPA). So the argument that species enhancement programs are ultimately for the benefit of marine mammals as a whole fails on moral and ethical grounds as well as in practice.

**STRANDING PROGRAMS**

The one area of activity in which dolphinaria and aquaria can legitimately claim to serve a conservation function is work involving the rescue, rehabilitation, and release of stranded marine mammals. Indeed, there are some very good stranding rehabilitation programs (although not all are associated with public display facilities); for example, the Sea Life Centre franchise in the United Kingdom takes pains to rehabilitate stranded young seals, teaching them to forage for live fish, while minimizing direct exposure to humans. The seals are eventually released back into the areas where they were originally found (or as close to these areas as possible).

But even stranding programs, as they are now conducted, give cause for concern, especially in the United States. Often the rescue efforts of the industry seem motivated by the desire to create better public relations. By saving injured manatees (*Trichechus manatus*) or by rehabilitating stranded dolphins, often spending many thou-

Stranding networks, to which many dolphinaria and aquaria belong, collect valuable data from living and dead animals. Animals rescued alive are sometimes kept for display. Photo: Regina Asmutis-Silvia

sands of dollars in the process, facilities persuade the public that they are altruistic and that they care for marine mammals in the wild—a public relations benefit worth the large investment of funds. While rescues are frequently heavily advertised in the media and released even more so, failed rescues (when an animal dies while in a facility's care or soon after release) are played down. A more subtle facet of the issue is that the public display industry takes every opportunity to use a stranding as proof that marine mammals' natural habitat is a dangerous place full of human-caused and natural hazards. The public receives a skewed picture in which an animal's natural environment is hostile and captivity is a benign alternative, a picture that is implicitly contrary to both conservation and welfare principles.

Also disturbing is the fact that public display facilities that rescue stranded animals appear to evaluate each animal in terms of display potential. Species that are highly desirable, such as orcas, or rarely observed in captivity, such as spotted dolphins (*Stenella frontalis*) or Risso's dolphins (*Grampus griseus*), may be determined to be unsuitable for release; these determinations are made with little oversight from either independent or government agencies. By rescuing these animals, a facility acquires an exotic exhibit at little cost, either financial or in terms of public relations.
As a result, dolphinaria and aquaria often claim that they foster research and scientific study of marine mammals, thereby contributing to both education and conservation. However, much of what can be learned from captive marine mammals has in fact already been learned. Reproductive physiology, such as length of gestation, and general physiology, such as visual acuity, have already been examined in some detail. Furthermore, using reproductive information from captive cetaceans may actually be detrimental to conservation and management due to unnatural and atypical breeding behavior in the artificial groupings of captive animals.10-

There may be some research questions that the study of captive animals can answer most directly (such as questions regarding cognition or the impacts of human-caused noise on hearing), but research programs that are not part of the entertainment industry could address those questions. Indeed, due to advancements in technology, such as biopsy darts, electronic tags, and underwater video, as well as improvements in capture and release techniques,17 in-depth study of the behavior and physiology of free-ranging marine mammals is now possible, adding to the redundancy of captive animals as research subjects.

One of the most famous critics of using the behavior of cetaceans in captivity as a model for animals in the wild was the environment-
Most cutting-edge behavioral research is being conducted on wild populations, with the aid of innovative technologies and methodologies. Captive marine mammals can offer only limited views of natural behavior and social structure.

talist and film-maker Jacques Cousteau, who said, "There is about as much educational benefit to be gained in studying dolphins in captivity as there would be studying mankind by only observing prisoners held in solitary confinement."

Keeping marine mammals in captivity can answer few of the many questions scientists have about natural social interactions. Most of the current behavioral research using captive animals relates to husbandry concerns, does little to benefit wild animals, and can provide some dubious results.

Behavioral ecologists do not in general look to public display facilities to conduct their studies. The future in behavioral research lies indisputably in the wild. In fact, captive studies have been known to give erroneous and misleading information, not borne out by comparative studies on wild animals, and researchers using captive animals have admitted that the constraints put on cetaceans, such as small pool sizes limiting natural behaviors, lead to biases in their results.

Even more alarming is the tendency by some public display facilities to market themselves as research organizations and gain non-profit tax status, although their primary function is to provide entertainment and serve as tourist attractions. The Dolphin Research Center (originally named the Flipper Sea School) in the Florida Keys calls itself an education and research facility and in 2003 made US$3.4 million, primarily through admissions and less charged for in-water encounters with captive dolphins. Despite having an annual income that would rival some marine laboratories, the actual research conducted is minimal, and relies primarily on outside researchers to use the captive animals as test subjects.

To illustrate the relative paucity of marine mammal research contributed by public display facilities, papers presented at the 2007 Society for Marine Mammalogy (SMM) Biennial Conference on the Biology of Marine Mammals included 371 presentations dealing with aspects of cetacean biology; only 5.1 percent of these were the result of work with captive animals. Of these few studies, more than a third were conducted through institutions that are not open to the public. There were only two abstracts submitted by SeaWorld, the largest holder of captive marine mammals in the world. At several previous SMM biennial conferences, no major North American facility made a presentation.

Research on captive animals can only be justified in circumstances where it is necessary to resolve critical questions to benefit the animals themselves or animals in the wild. It should be conducted through research-sabbatical programs, in which animals are held only for brief periods. Such programs have been pioneered successfully by several marine mammal researchers. Dolphinaria are not essential to continued research on marine mammals.
CHAPTER 2

The Physical and Social Environment

The preceding discussion illustrates the fallacies and inconsistencies in various arguments used to justify the holding of marine mammals in captivity for public display. In the discussion that follows, physical, environmental, and behavioral factors, as well as life-history parameters, are examined and compared for marine mammals living in captivity and in the wild to illustrate more concretely the fundamental inhumanity of holding these species in confinement.

In any design of a dolphinarium or aquarium, satisfying the needs of the visiting public and the facility’s budget come before meeting the needs of the animals. If every measure were taken to create comfortable, safe, and appropriate conditions, then the size, depth, shape, surroundings, props, colors, and textures of enclosures would be different from those seen now. The tanks speak for themselves. Their overall size, shape, and depth are determined by the need for maximum visibility from the surrounding bleachers. The design is also influenced by economics (it becomes prohibitively expensive to build larger enclosures) and management concerns (the control of large, dangerous animals becomes infinitely more difficult as the space allotted to them increases, and efficiency of maintenance and disinfection dictates slick surfaces as opposed to intricate textures and naturalistic substrates, which would simulate the natural marine environment).

Sea pens are enclosures that are fenced-off portions of open seawater or lagoons, and are generally thought to be preferable to a tank. Marine mammals are held in natural seawater, as opposed to chemically treated, filtered, and/or artificial saltwater. The surroundings may often be more “natural” or complex and thus more “interesting” for the marine mammals than a typically featureless tank.

However, sea pens have their own unique problems and their conditions can compromise the health of, and even lead to the death of, marine mammals kept within them. For example, pens may be close to a source of pollution (such as runoff from roads, sewage outfalls, or water leached from land-based septic tanks). Also, the animals may be exposed to high levels of sound, which can cause distress or hearing damage. Noise from boat traffic and coastal development may echo off the shallow seabed, creating sound levels well above those in the open ocean.

Many of these sea pen facilities are also in areas subject to hurricanes or typhoons. Penned animals cannot escape storms, and facilities frequently do not evacuate animals (and contingency plans) with sufficient speed.

The widespread expansion of dolphin sea pens in the Caribbean is a particular cause for concern, as these further diminish natural barriers that have already been degraded by high levels of coastal development; moreover, the Caribbean is considered to be an area particularly at risk from hurricanes and tsunamis.

Sea pen facilities may not have adequate tidal flow to keep the water properly circulated and replenished. Some need periodic dredging, which may disrupt and stress the dolphins. Photo: WSPA.
plans are often wholly inadequate). The aftermath of a hurricane can leave sea pens clogged with debris and contaminants, with dolphins suffering severe injuries, disease, and even death.\(^{19}\) Hurricanes can also lead to animals escaping from the enclosures.\(^{19}\) This may seem like Mother Nature giving the animals their freedom, but releasing non-native species into foreign waters is generally believed to amount to a death sentence for the animals.\(^{20}\)

Probably the best known incident involving captive marine mammals and hurricane impacts occurred during the aftermath of Hurricane Katrina in 2005, when eight dolphins were left behind in Marine Life Oceanarium in Gulfport, Mississippi. All were carried out into the Gulf of Mississippi in the storm surge, which led to a rescue that cost at least several tens if not hundreds of thousands of U.S. tax dollars.\(^{21}\) Hurricane Wilma hit the Yucatán Peninsula only a few weeks later and devastated several dolphinariums in Cancún and Cozumel.\(^{22}\)

Another issue with respect to sea pens is their impact on "natural barriers." Natural barriers are physical structures such as barrier islands or biological structures such as mangrove stands and coral reefs, which help to buffer and shield coastal areas from the impact of storms, hurricanes, or tsunamis. Removal of these barriers by coastal development has been blamed for increasing the damage and destruction caused by hurricanes and other natural disasters, such as the 2004 Asian Tsunami.\(^{23}\) Concern has been raised about the impact of dolphin sea pens on natural barriers, through the dredging and physical removal of barriers to make space for them. In addition, the pollution from coastal dolphin enclosures, such as local waste and the detritus from decomposing, uneaten fish (as well as waste from associated tourism infrastructure, such as toilets) can have a significant impact on coral reefs in particular.\(^{24}\) The widespread expansion of dolphin sea pens in the Caribbean is a particular cause for concern, as these further diminish natural barriers that have already been degraded by high levels of coastal development; moreover, the Caribbean is considered to be an area particularly at risk from hurricanes and tsunamis.\(^{25}\)

In the South Pacific, another area frequently impacted by tsunamis, construction of dolphin sea pens is now a major cause of mangrove destruction, joining coastal shrimp ponds and other aquaculture projects. This also means that sea pens are often in close proximity to aquaculture sites, which are frequently doused with pesticides and pharmaceutical treatments, producing sewage as well as waste effluent. These all pose toxic risks to the health of cetaceans penned nearby.\(^{26}\)

**Pinnipeds and Other Non-Cetaceans**

Many pinnipeds (seals, sea lions, and walruses) are migratory. Although they tend to be relatively sedentary on land, they have evolved to make annual journeys of hundreds or thousands of kilometers through the oceans. Even for species that are not migratory, as is the case with most harbor seals (*Phoca vitulina*), the coastal environments that pinnipeds inhabit are rich in biodiversity.\(^{27}\) Public display facilities that house pinnipeds generally provide them with only a small pool filled with chlorinated freshwater.\(^{28}\) Chlorine precludes live plants and fish in the pool and can cause serious skin and eye complications for marine mammals.\(^{29}\) The small "land" area of the enclosure, provided to allow the animals to "haul-out" (come out of the water to rest), is usually a concrete simulation of bare rock. Most facilities provide disproportionately for the land portion of the animals' existence (where the public can see them) and not enough for the animals' aquatic needs. One or two facilities, rich in financial resources, have designed saltwater enclosures with wave machines to simulate the rhythm of tides and waves. This superficial advance, which most facilities cannot afford, serves more to appeal to the sense of propriety among the viewers than to benefit the captive animals. It also highlights the fact that no facility can simulate the vast reaches of the ocean that these animals traverse when they migrate, or can include in the enclosure oceanic flora and fauna. In short, in physical terms, the captive environment of these animals is profoundly limited and impoverished.

Most pinnipeds form large social groups. California sea lions congregate in groups of dozens of animals when on land, occasionally achieving aggregations of hundreds of individuals. When in the water, they float together in large "rafts" to regulate their body temperatures. Walruses also form herds of hundreds of individuals, entirely covering small islets with their bodies. Many pinniped species are territorial or maintain dominance hierarchies; relationships with conspecifics (members of the same species) are often very complex and can take years to develop.\(^{30}\) In captivity these
gregarious species are forced to exist in small groups, sometimes of no more than two or three individuals. Thus, in social terms, too, the captive environment is barren and artificial.

Polar bears are the perfect example of a species whose habitat and range cannot be even remotely simulated in captivity. They live in the demanding Arctic ecosystem and are physiologically, anatomically, and behaviorally suited exclusively for this harsh habitat. These animals can cover a home range of thousands of square kilometers of land in their hunt for food; they can also swim for hundreds of kilometers between ice floes.  

Recent analyses show that wide-ranging predators more frequently exhibit poor health, stereotypical behavior, and high infant mortality rates in captivity. Polar bears are among those species that react poorly to captivity, showing signs of stress and physiological dysfunction. The authors of the analysis suggested, as one way to address this problem, that zoos might consider no longer exhibiting wide-ranging carnivores such as polar bears. However, polar bears

To use the rigors of the wild as a justification for the conditions of captivity is misleading and disingenuous. This argument implies that the natural state is an evil to be avoided and that the captive environment is the preferred state. The suggestion is that animals must be protected from the very surroundings that sustain them. This misrepresentation of the natural environment as threatened to the health of these animals will certainly not encourage people to protect, respect, or understand the animals' natural habitat.

are not the only marine mammals to show stereotypical behaviors when kept in captivity; some pinnipeds and most cetaceans also commonly respond to captivity with such behaviors.

Aquaria and zoos that display polar bears argue that their facilities provide less rigorous living conditions and are therefore better for the bears; they claim that providing freely available and plentiful food eliminates the bears' need for a large area in which to roam. But to use the rigors of the wild as a justification for the conditions of captivity is misleading and disingenuous. This argument implies that the natural state is an evil to be avoided and that the captive environment is the preferred state. The suggestion is that animals must be protected from the very surroundings that sustain them. This misrepresentation of the natural environment as threatening to the health of these animals will certainly not encourage people to protect, respect, or understand the animals' natural habitat. Moreover, to suggest that the lives of captive polar bears are better than those of polar bears in the wild because they have been spared—or in fact prevented—from having to do exactly what evolution has shaped them to do is absurd.

The specialized needs and reproductive behavior of polar bear mothers and cubs—such as denning, in which female polar bears build dens out of ice and snow in which to give birth and protect their young for the first few months of their lives—are difficult to accommodate in captivity. Polar bears are routinely maintained in small concrete enclosures with tiny freshwater pools. Being exposed to hot, temperate-clime summers and sharing the same space with the same few bears for life expose polar bears to a set of physical and psychological stressors with which they are poorly equipped to cope—an issue that even the public display industry recognizes. Moreover, as mentioned above, the development of stereotypical behaviors is often found in these large carnivores when in captivity. The conditions in which captive polar bears are maintained around the world are often woefully inadequate.

The Canadian government has been involved in a controversial trade in wild-caught adult polar bears and cubs, primarily from Manitoba, to captive facilities worldwide. In 1995, the Wildlife Branch of Manitoba Natural Resources exported two polar bear cubs to a zoo in Thailand. This brought international attention to a government department that was found to have traded more than 30 polar bears to a number of zoos. The animals traded were primarily adult "nuisance" bears—bears who repeatedly came close to towns and human habitation—and orphaned bear cubs—orphaned when their mothers were shot in hunts, in self-defense, or as nuisances.

Inspections of the receiving zoos showed that conditions at many of them were very poor, and often dire. For example, Aso Bear Park in Japan had 73 bears kept in underground cells only one meter by two meters in size. Its enclosures for the polar bears it received from Manitoba were hardly better: an eight-square-meter concrete cage for two animals. Dublin Zoo, which also received
The behavior and physiology of polar bears are ideally suited to their vast and rugged Arctic habitat. These adaptations become burdens in captivity. Photo: ©2009 JUPITERIMAGES Corporation

Manitoba bears, provided a larger but still wholly inadequate space—310 square meters for two bears. In contrast, Sweden’s 1982 space requirement for two adult polar bears was approximately 1,200 square meters, and the standard for two adult polar bears in Newfoundland is 4,500 square meters. 90

As a result of the polar bear trading controversy, the Wildlife Branch, through a Polar Bear Facility Standards Advisory Committee, examined the polar bear export program and introduced recommendations in late 1997 to address some of the problems. Not surprisingly, these recommendations had many flaws, including weak guidelines for enclosure temperatures and no recommendation for bears to be placed in facilities with improved enclosure sizes and soft-substrate floor space. 91 Finally, in 2002 Manitoba’s Polar Bear Protection Act was passed. 92 The act restricted the capture of polar bears to orphaned cubs only (i.e., no “nuisance” adults) and then only under certain conditions. 93 However, many of the regulations governing the placement of these orphaned cubs are still woefully insufficient—for example, two bears can be placed in an enclosure only 500 square meters in size and the regulations only require a “comfortable” temperature rather than the Arctic temperatures to which the bears are adapted. 94

Manatees are the only marine mammals who sometimes are displayed in enclosures that simulate their natural habitat. 90 Because manatees are herbivores and have slow metabolisms, it appears to be easier to keep their enclosures hygienic without resorting to sanitation methods that kill vegetation and fish. Manatees are also physically slow and, for wholly aquatic animals, relatively sedentary, which appears to mitigate to some extent the restrictiveness of the small tanks in which they are held. Manatees are a special case: very few are held in captivity (most of the permanent captives are animals who have been injured and deemed unable to be returned to the wild), they are herbivorous marine mammals, and they are so critically endangered throughout their range that their treatment has been unique. In many ways the treatment of manatees exemplifies how dolphins and aquaria should treat all species of marine mammals, whether or not they are endangered or threatened: only beached, injured, or rescued individuals should be held (pending release), only those who cannot be released should be displayed (without the requirement of performing or enduring interactions with the public), and every effort should be made to create enclosures that are as close to natural habitats as possible.

Sea otters (Enhydra lutris) should logically be even easier to keep in captivity under conditions that simulate the natural environment, given their small size and sedentary habits. However, they are known to be particularly vulnerable to fatal shock as the result of handling and during transportation. 95 Mortality rates of sea otters in U.S. facilities have not received as much attention as those of cetaceans and pinnipeds, but these rates, particularly for pups, have been very high. 96 The majority of captive sea otters are currently being held in Japan (more than 100), where there is no reliable information on survival rates, but Japanese aquaria and zoos have stated that there has been poor success in captive breeding—resulting in requests for permits to capture sea otters in Alaska. 97 A program in California to rescue orphaned pups of the threatened southern sea otter population

The slow-moving, herbivorous manatee may be the only marine mammal whose needs can be adequately met in captivity. However, it is an endangered species and breeds well in the wild—it’s primary conservation need is protected habitat.
Sea otters are unusually vulnerable to stress when handled and transported. Photo: The HSUS

has increased its success at returning these animals to the wild by minimizing human interaction with them. 24

SMALL CETACEANS

The small cetaceans typically held in captivity, such as bottlenose dolphins and orcas, are wholly aquatic, wide-ranging, fast-moving, deep-diving predators. In the wild they may travel as many as 150 kilometers in a day, reach speeds as high as 50 kilometers an hour, and dive several hundred meters deep. Small cetaceans are highly intelligent, extraordinarily social, and behaviorally complex. 25

Their perception of the world is largely acoustic, a difference in mode of perception that makes it virtually impossible for humans to imagine what they “see.”

Dolphinaria and aquaria cannot even begin to simulate the natural habitats of these species, any more than they can that of the polar bear. 26 The water in their tanks is often chemically treated and filtered to prevent the animals from swimming in their own waste. Smooth concrete walls usually surround these sound-sensitive animals and inhibit or discourage the natural use of their acoustic abilities. As in pinniped pools, if chlorine is added to the water, live plants and fish cannot be placed in the pools. Nothing is further in composition from the coastal environments of Florida, the Hudson Bay, or Iceland—with their algae, fish, storms, rocks, sand, ice, and mud—than the small, empty, chlorinated, smooth-sided tanks of many dolphinaria and aquaria. The natural activity levels, sociality, hunting behaviors, acoustic perceptions, and indeed the very texture of small cetaceans' natural environments are all severely compromised by the circumstances of captivity. As noted earlier, sea pens, while providing natural sea water and avoiding the use of chemicals, are in many ways no better than tanks and have their own significant drawbacks.

Bottlenose dolphins often have home ranges exceeding 100 square kilometers—it is impossible for captive facilities to provide space even remotely comparable to that used by these animals in the wild. The difficulty faced by captive bottlenose dolphins in expressing their natural behavior was illustrated in a 1996 study conducted at Long Marine Laboratory in California. 27 At the time of this study (and still today), the legal minimum horizontal dimensions in the United States for tanks holding two bottlenose dolphins were 7.32 meters for length and 1.83 meters for depth. 28 The researchers looked at the behavior of two bottlenose dolphins in two pools, one that was roughly 9.5 meters in diameter and a second that was approximately 16 meters in diameter (the pools were not perfectly circular). The dolphins' behavior in the large pool more closely resembled (while still not matching) natural behavior, whereas the animals were more often inactive in the smaller pool. 29 It is widely known in the public display industry that larger pools decrease aggression and increase breeding success, but yet the industry continues to lobby against any regulatory revisions that would increase the minimum pool size standards. This effort was reflected through a lack of consensus on the issue of pool size standards during a negotiated rule-making process in 1995–1996 to amend the U.S. care and maintenance regulations. 30

Even in the largest facilities, a captive dolphin's room to move is decreased enormously, allowing the animals access to less than one ten-thousandth of one percent of their normal habitat size! In an attempt to deflect attention from this fact, public display facilities argue that captivity, with its reliable and plentiful food supply, eliminates cetaceans' need to range over large distances daily. 31

An observation that refutes this claim is that of orcas in British Columbia's Johnstone Strait, a small, salmon-rich section of Canada's Inside Passage that orcas frequent during the summer months. Orcas leave Johnstone Strait daily, often traveling 40 kilometers north or south of this area in one night. 32 It may be that at one point in their evolutionary history these whales traveled such distances only for foraging purposes, but their physiology has adapted to this level of exertion, and now, regardless of the availability of food, they may require this amount of exercise for good health. 33 Clearly, whatever the principal reason for their ranging patterns, confining cetaceans in a pool that is at best only six or seven times their body length guarantees a lack of aerobic conditioning and brings on the endless circling and stereotypical behaviors seen in other wide-ranging carnivores in captivity. Such confinement is inhumane at a nearly inconceivable level.

The situation is equally unacceptable and perhaps even worse in regard to the social environment provided for these animals in captivity. Small cetaceans are not merely gregarious; they form a complex society that is frequently based on kinship. Certain cetacean species are known to retain family bonds for life. In some populations of orcas, family ties are so persistent and well-defined that all family members are usually within a four-kilometer radius of each other at all times. 34 Captive facilities, with their logistical constraints, commercial considerations, and space limitations,
Side enclosures such as these are meant to hold animals only temporarily, usually for medical reasons. However, many animals end up confined in these small spaces for weeks, months, and even years. Photo: WSPA

cannot provide conditions that allow natural social structures to form. In captivity, social groups are wholly artificial. Facilities mix Atlantic and Pacific stocks, unrelated animals, and, in the case of orcas, races (transient and resident), which have disparate diets, habits, and social structures. As noted earlier, calves are typically removed from their mothers to separate quarters after only three or four years, if not sooner.  

A prime example of the inappropriateness of captive cetacean environments is the Dolphinella dolphinarium in Sharm el Sheikh, Egypt. This facility holds three bottlenose dolphins and, until recently, two beluga whales. Beluga whales are an Arctic species, adapted to living in frigid waters almost at the point of freezing. Yet in Sharm el Sheikh they were being kept in an outdoor facility on the edge of a desert. In addition, the facility has two pools; the three dolphins are held in the larger pool, while the two larger belugas were held in a tiny medical pool and were never allowed into the bigger pool. A campaign by animal protection groups persuaded the owners to transfer the belugas to a larger enclosure in Cairo, but these polar animals are still languishing in desert heat.

CONCLUSION

Unlike the habitat of some terrestrial mammals, the habitat of marine mammals is difficult and frequently impossible to re-create or simulate, even in microcosm. If provided with a large and rocky enclosure, most pinnipeds, even those that are migratory, do not find their need to haul-out specifically compromised by captivity. What is compromised, however, is the opportunity for the intense physical activity, expression of natural foraging behaviors, and crucial interactions with conspecifics that typify pinnipeds when mating or at sea. The social environment is not re-created; it is artificially reconfigured. In many cases, species such as Pacific gray seals (Halichoerus grypus) and Pacific California sea lions, who, living in their separate oceans, would never interact in the wild, are housed together. Certain marine mammal species that are from remote, specialized habitats, such as polar bears, are severely compromised physiologically and can suffer immensely.

Cetaceans are in all ways severely compromised by captivity. The reduction in their horizon represented by a tank, even a large one, is extreme. Neither their physical nor their social environment can be simulated or re-created. Tanks are frequently effectively sterile, and social bonds are artificial. Life for captive cetaceans is indeed “different,” as many facilities admit. Given that this different life has nothing in common with the life for which cetaceans have evolved and for which they are suited, it can only be regarded as worse than life in the wild.

This tank offers only rudimentary shade, but that is more than most tropical enclosures. Wild dolphins can retreat to deep water when the sun is high, but in shallow tanks and pens, the water temperature can rise dangerously high without shade. Photo: WSPA

Enclosures holding only two or three dolphins are not uncommon. In the wild, dolphin groups containing dozens of animals frequently form bonds that can last a lifetime. Photo: Susan Croft
Most captive marine mammals receive regular vitamin and mineral pills in their ration of fish. This implies that their diet of a limited variety of frozen fish is deficient in some manner, and the nutritional quality of frozen fish is, in fact, markedly lower than that of living fish. The constant administration of pills is often referred to as a benefit of captivity; the fact that wild animals do not require such supplements is never mentioned. The limited choices offered to captive animals in regard to food and its methods of provision are cause for concern. The lack of behavioral and physical stimulation (when foraging is eliminated from the behavioral repertoire) and the lack of dietary variety may contribute to behavioral disturbances and health problems.

Medical isolation enclosures are frequently much smaller than primary enclosures; facilities claim that medical tanks are only temporary quarters and insist this distinction makes their restrictiveness acceptable. However, some animals, such as sexually mature males or aggressive individuals of either sex, are often sequestered in these tiny pools on a routine basis. In some facilities, animals are frequently held in such secondary enclosures during tank-cleaning procedures. In older facilities (or new ones built cheaply), they may also be left in the primary enclosure in only a few inches of water during the cleaning process (this experience is similar to stranding, which is harmful to marine mammals and, in large and wholly aquatic animals such as cetaceans, can lead to a series of physiological changes that end in death if reflooting does not occur promptly). Cleaning may last for up to an hour (and animals have been known to be overlooked and left stranded for several hours when their tanks were being drained) and must be considered a stressful experience at the very least, if not also directly physically damaging.

For marine mammals used in shows, food is usually associated with training or performances, leading to the complete elimination of natural foraging patterns. Photo: WSPA

Another abnormally stressful procedure for marine mammals, and for cetaceans in particular, is transport from one location to another, whether it is between tanks within a single facility or between facilities. It is unnatural for cetaceans to remove themselves wholly from the water, even when beached, contact with the water is almost always partially maintained. However, captive cetaceans are routinely placed on stretchers, loaded onto vehicles, typically either trucks or airplanes, and subjected to an alien environment for as many as 24 or more hours. Some marine mammals are sea-
Cetaceans are difficult to diagnose; their lack of mobile facial expressions and body language with which humans can empathize (such as shivering or cowering) make developing health problems difficult to recognize. An all too common pattern is for facility personnel to find an animal lacking in appetite and for that animal to die within one or two days of this discovery—long before any treatment program can be determined, let alone administered.

Dolphins are not scavengers. When wild-caught, they must learn to eat dead fish. If they refuse, they may be force-fed. If they continue to starve, they may be released to an uncertain fate. Photo: BigStockPhoto/Kobby Dagan

The dolphin's perpetual smile is often taken as a sign of contentment; in truth, it is just an anatomical characteristic that has no relation to health or emotional state. This dolphin appears to smile but is actually injured and gravely ill. Photo: WSFA

Delphinaria and aquaria routinely administer prophylactic antibiotics and ulcer medications to captive cetaceans. Bacterial infections are a common cause of death in these animals. Pneumonia, which is generally brought about by some other condition, such as stress or a compromised immune system, is the most commonly cited cause of death in the NMFS's Marine Mammal Inventory Report. Rarely do necropsy (animal autopsy) reports identify the cause of the pneumonia. Approximately 10–20 percent of the deaths stem from undetermined causes. Cetaceans are difficult to diagnose; their lack of mobile facial expressions and body language with which humans can empathize (such as shivering or cowering) make developing health problems difficult to recognize. An all too common pattern is for facility personnel to find an animal lacking in appetite and for that animal to die within one or two days of this discovery—long before any treatment program can be determined, let alone administered. Veterinary care for cetaceans is still relatively primitive; for instance, although it has become possible to administer anesthesia to cetaceans, it is extremely risky, and usually anesthesia is administered for surgical procedures as a last resort.
CHAPTER 4

Human-Dolphin Interactions

DOLPHIN-ASSISTED THERAPY

There are a growing number of public display facilities, both in the United States and internationally, that allow tourists to swim with captive dolphins. One of the justifications for such interactions is so-called Dolphin-Assisted Therapy (DAT). DAT is a form of animal-assisted therapy, usually directed by a health service professional, where touching or swimming with dolphins is used as a means to motivate or reward a disabled child or adult. The idea behind DAT is that swimming with dolphins can have a variety of health benefits (both mental and physical), an idea that is heavily promoted by dolphinaria that offer dolphin swims.39 These so-called therapeutic effects do not, however, hold up well under scrutiny, with researchers in a variety of medical and cognitive disciplines and dolphin protection advocates concluding that studies conducted by facilities were methodologically flawed and questioning the scientific validity of claims for therapeutic effectiveness.36

Many new commercial facilities around the world claim they are conducting DAT, seeking to put a positive, altruistic spin on a money-making venture. Many of these, however, are staffed by individuals with questionable credentials.39 In fact, DAT appears no more effective than using domesticated animals such as puppies or kittens, and is far more expensive and clearly carries higher risks for the patients (see “Chapter 5: Risks to Human Health”). In fact, the founder of DAT, Dr. Pesty Smith, ultimately concluded that DAT was exploitative of dolphins and people and has discontinued its practice; she now only works with domesticated animals.38

It should be emphasized that the conduct of SWTD interactions in most countries is largely unregulated, leading to wide variation in their relative quality and safety—for humans and dolphins.

SWIM-WITH-THE-DOLPHINS ATTRACTIONS

Outside the United States, there is little oversight of swim-with-the-dolphins (SWTD) attractions—even when captive marine mammal care and management regulations exist, they often do not include specific provisions to govern SWTD attractions. The following section therefore focuses on the U.S. regulatory regime for SWTD interactions (whose enforcement is currently suspended),37 as it has served as the model for those few countries with SWTD regulations and guidelines. It should be emphasized that the conduct of human-dolphin interactions in most countries is largely unregulated, leading to wide variation in their relative quality and safety—for humans and dolphins.

The NMFS is the agency in the U.S. Department of Commerce with specific authority to implement and enforce the MMPA for certain species.36 The NMFS commissioned a study, completed and published as an agency report in April 1994, on the effects of SWTD interactions on dolphin behavior.37 The report identified several areas of concern, including a number of behaviors and situations that were high risk for both the dolphins and the swimmers.37 The agency report concluded that to ensure the safety of dolphins and swimmers, SWTD interactions should be strictly controlled.37

According to the NMFS study, the short-term risk to dolphins is primarily that under certain uncontrolled circumstances, dolphins

High-energy behaviors from swimmers and dolphins can lead to human injuries. SWTD participants receive bites and bruises from dolphins more often than is reported. Photo: Toni G. Frohoff
Dorsal fin and pectoral fin "tows" can lead to human or dolphin injury. Photo: ©iStockphoto.com/Karen Roach

routinely behave submissively toward swimmers. This disturbing dynamic has potentially serious implications. It could affect the dominance hierarchy within the dolphins' social group, resulting in increased injury to the submissive dolphin; it may also indicate a general and persistent level of stress to which the submissive dolphin is being subjected, which could in turn affect his or her long-term health.

The agency report noted an additional concern regarding the dolphins used in SWTD interactions. The NMFS required that these dolphins be given some area within the swim enclosure that served as a refuge from swimmers; swimmers were not allowed to enter the area and dolphins were supposed to be free to enter the area whenever they felt the need to avoid the attentions of swimmers. It has been shown that dolphins significantly increase their use of such refuge areas when exposed to the public in SWTD attractions. However, the NMFS report noted that at one facility the refuge area was neither easily accessible nor attractive to the dolphins, so they would not use it even if they wanted respite from swimmers. At the other facilities, while the refuges were accessible and attractive, the dolphins were routinely recalled from them, thus negating their purpose as a voluntary haven.

From the facilities' point of view, recalling dolphins from the refuges during swims makes sense: customers pay to swim with dolphins, not to watch dolphins avoid them. From the dolphins' point of view, however, being recalled from a refuge means that they are not allowed to choose the level of interaction that they find tolerable. If the dolphins' need for respite is thwarted often enough, it could lead directly to increased levels of stress and to injurious interactions with swimmers. The case of refuges is an example of the economic basis of the public display industry directly conflicting with the needs of the dolphins.

The agency report also expressed concern for dolphins who are unsuited to SWTD interactions. If these attractions proliferate, the number of animals who become unusable in SWTD interactions (either because they act aggressively toward or do not readily interact with swimmers) would increase accordingly. The potential to develop a population of dolphins who are not wanted in SWTD attractions or standard public display facilities is alarming.

This begs the question, "What becomes of these dolphins?" Given the lack of rehabilitation and release programs, the absence of "retirement" facilities for marine mammals, and the enormous cost of maintaining dolphins in captivity—particularly those who do not "pay their own way"—this question is of great concern.

SWTD attractions do not educate the public; they exploit both dolphins and people. The HSUS and WSPA believe that SWTD attractions should be unconditionally prohibited. However, the relevant authorities in all countries where such facilities operate have allowed their continued operation, in most cases without regulation.

The growing number of SWTD attractions in the Caribbean is a particular concern. There are at least 25 facilities in the region, with one or more in countries such as Jamaica, the Bahamas, Honduras, Cuba, and the Dominican Republic. Ten or 12 more are being pro-
Dolphins in petting pools, in direct contact with visitors unaware of the potential harm they can do, are in danger of ingesting foreign objects. Photos: WDCS

posed or are in the planning or building stages on islands such as the Caymans and Anub. Almost none of these jurisdictions have appropriate controls for the health or safety of either the dolphins or human participants in these interactions. Two of these facilities

Too many people and too many (or too few) dolphins in an enclosure together is simply asking for trouble. Photo: WSPA

have reportedly been involved in illegal activities. We have submitted comments to various authorities in an effort to ensure the strictest possible standards for these programs to minimize potential hazards for both dolphins and people, but clearly the goal must continue to be the prohibition of these exploitative operations.

PETTING POOLS

Petting pools are presently found at four facilities in the United States (SeaWorld Orlando, San Antonio, and San Diego, and Six Flags Discovery Kingdom in Vallejo, California). There is one in Canada (Marineland Ontario), at least one in Japan, and at least one in Europe, at Marineland Antibes in France. These attractions allow visitors to feed and touch animals (often bottlenose dolphins, but also belugas, sea lions, and even orcas) from poolside. Dolphinaria argue that such interactions attract more tourists to their parks, thus enhancing public education about marine mammals, but this is not supported by research. In fact, petting pools and feeding sessions are actually leading to more conservation problems in natural habitat, as members of the public assume that touching and feeding wild dolphins is acceptable—the petting pools are setting a bad example.

For more than a decade, WDCS (the Whale and Dolphin Conservation Society) and The HSUS have been monitoring petting pools in the United States and the risks they pose to both humans and dolphins. In the summer months, dolphins in petting pools can be exposed to humans 12 hours a day, every day, with the public often splashing water or slopping the sides of the tank to get the dolphins’ attention, adding to an already noisy environment. In addition, although feeding of dolphins is regulated by law in the United States and is only supposed to be done under strict supervision, there have been repeated observations of dolphins in petting pools being fed popcorn, bread, French fries, sandwiches, and the contents of drink containers. This inappropriate feeding was either not seen by so-called “supervisors,” or no attempt was made to stop it. Many of the petting pool dolphins were also noticeably obese, clearly indicating that supervision of feeding was ineffective and that competition among the animals left some dolphins overfed (and conversely, some possibly underfed). Perhaps most alarming were observations of the public placing objects such as glasses, paper, stones, coins, bottle tops, metal souvenirs, and even a baby’s pacifier into the mouths of dolphins or offering them wristwatches and even cigarettes. If such objects are swallowed, they can cause intestinal injuries, poisoning, and even death.
A detailed survey of public display facilities, conducted in 1989, presented interesting insights into why many dolphinaria did not have a petting pool or, if they did, why they closed it. The survey recorded the following statements: "We abandoned the practice because of overfeeding, difficulties regulating amounts fed, and potential injury to the public," and "My objections are hygiene (the state of the public's hands), the possibility of foreign bodies being placed in the fish... and the staffing commitment that would be necessary to police such a facility." The concerns we express above are strongly reflected in these statements from industry representatives.

Dolphins swallow fish whole. If fish offered by members of the public have been split open and broken up, exposed bones can damage an animal's digestive tract. Photo: BigStockPhoto/Finlay Long

Touching a dolphin as part of a show is encouraged, but this behavior with wild dolphins constitutes harassment and is illegal. Children can be confused by these mixed messages. Photo: ©Pimentel, Inc.

In addition, the risk of injury to people from being bitten or hit and of disease transfer from people to captive marine mammals posed by direct contact between the two is ever present. Although members of the public are requested to wash their hands before touching dolphins or sea lions, this does not always occur, and even this would not be sufficient if someone coughed or sneezed over an animal. Diseases could also be spread to humans; there are a number of pathogens found in marine mammals that can be, and have been, transferred to people (see "Chapter 5: Risks to Human Health").
CHAPTER 5

Risks to Human Health

DISEASES

In a 2004 report to the U.S. Marine Mammal Commission (MMC), researchers from the University of California highlighted the potential health risks to which humans are exposed through contact with marine mammals. In an internationally distributed survey of people who come into contact with marine mammals (primarily those who work with these animals), 23 percent of respondents reported contracting a skin rash or similar ailment. As with marine-mammal-inflicted injuries, workers in the public display industry are in a high-risk group for infection.

Exposure to marine mammals can involve a health risk to people working with the animals, but it can also threaten the health of the public. Diseases contracted from marine mammals are difficult to treat and diagnose, as they may be overlooked or even ignored by physicians who are not aware of the risks—or range—of potential infectious diseases.

Respiratory diseases were also reported in nearly a fifth of marine mammal workers, including diseases such as tuberculosis.

Clearly, exposure to marine mammals can involve a health risk to people working with the animals, but it can also threaten the health of the public. Diseases contracted from marine mammals are difficult to treat and diagnose, as they may be overlooked or even ignored by physicians who are not aware of the risks—or range—of potential infectious diseases.

Injury and Death

The risks faced by swimmers in SWTD attractions are alarming, as is made evident by an examination of the injury reports submitted to the NMFS from 1981 to 1994. The NMFS received more than a dozen reports of injuries to people who participated in U.S. swim sessions, ranging from lacerations to broken bones and shock. One man suffered a cracked sternum when butted by a dolphin, and a woman received a broken arm when similarly rammed. Several dolphin biologists have noted that few, if any, dolphin-inflicted human injuries could be truly accidental, yet all the injuries in SWTD injury reports were so labeled. Broken bones and broken face masks were described as the result of "accidental bumps."

In a more recent incident, on 7 October 2004, a 49-year-old man was admitted to Jackson Memorial Hospital, having sustained injuries from a captive female dolphin at the Miami Seaquarium. The injuries were severe enough that surgery was required. Such incidents have happened outside the United States as well; for example, in early 2008 three tourists were injured at a SWTD facility in...
Curaçao. The facility tried to downplay this incident and described it to local media as a "bump"; however, a digital recording by a bystander showed the dolphin breaching (a breach is a leap out of the water, with the animal landing on his or her side on the water's surface) in a manner that seemed quite deliberate. The dolphin landed directly on the swimmers, resulting in a significant impact.25

Members of the public have been observed holding children and babies over the heads of dolphins at petting pools, oblivious to the fact that dolphins can and will bite, not to mention the risk of falling into the pool.

It is disturbing that the personnel at SWTD attractions claim that almost all injurious human-dolphin interactions are accidents when experts on dolphin behavior express skepticism about their accidental nature. Clearly the public has an image of the dolphin as friendly and gentle, and in several SWTD injury reports the victims expressed a feeling of responsibility for the incidents in question. However, marine mammals are clearly capable of inflicting injuries and even killing humans. It seems a wise precaution before the beginning of a swim session to disabuse participants of the myth that dolphins would never deliberately harm a person, yet this does not seem to be occurring.

The fact is that at any time during a swim session, especially one that is not controlled, dolphins may inflict minor to serious injuries on swimmers for various reasons, some of which are neither obvious nor predictable. Even in controlled swim sessions, the risk is always present and is potentially lethal. It is probable that a person will eventually be killed in these programs, more likely in one of the many new facilities in the developing world being built and operated by entrepreneurs who know little about dolphins but anticipate a large profit from this lucrative tourist activity. This has significant implications for the dolphins as well. Should an animal be involved in a seriously injurious or fatal interaction, he or she would certainly be removed from the attraction and would face an uncertain fate.

There is also a risk that petting pool dolphins will inflict injuries on members of the public. Frequent teasing by visitors and other inappropriate behavior, such as touching sensitive areas of the dolphin's body, like the eyes or blowhole, increase the likelihood of aggression by the dolphins. Members of the public have even been observed holding children and babies over the heads of dolphins at petting pools, oblivious to the fact that dolphins can and will bite, not to mention the risk of falling into the pool.25

Despite their portrayal by the public display industry as happy, friendly, and playful animals, marine mammals are—with the exception of the manatee and dugong (Dugong dugon)—predators. Moreover, in the wild, their behavior to conspecifics and other marine mammals is often aggressive—and sometimes violent. For example, bottlenose dolphins, the most commonly kept cetacean species in captivity, have been regularly reported attacking and killing members of other cetacean species,26 and even attacking and killing conspecifics' calves.26 Orcas, another commonly kept cetacean, are well known for their predatory behavior and have been recorded killing a wide variety of marine mammal species.25

The MMC survey from the University of California discovered that more than half of marine mammal workers had been injured by the animals (251 cases altogether).26 Those in regular contact with marine mammals or involved with cleaning and repairing...
enclosures were more likely to be injured. Trainers and dolphinarium staff are frequently injured, but these incidents are rarely reported publicly.

The aggression and violence of which orcas are capable were clearly witnessed at SeaWorld San Diego in August 1989, when an Icelandic female (Kandu V) rammed a northeastern Pacific female (Corky II) during a show. Although trainers tried to keep the show going, blood began to spurt from a severed artery near Kandu’s jaw. SeaWorld staff then quickly ushered away the watching crowd. Forty-five minutes after the blow, Kandu died. It should be noted that two orcas from different oceans would never have been in such proximity naturally, nor is there any record of an orca being killed in a similarly violent encounter in the wild.29

Given their size, strength, and clear ability to be violent, it is hardly surprising that cetaceans have been known to exhibit aggression toward humans in the wild. Most commonly this aggression is exhibited toward humans trying to swim with cetaceans. Such aggressive behavior includes bottlenose dolphins trying to prevent swimmers from leaving the water, especially when the swimmers had also been trying to feed the animals, as well as biting members of the public.29 In Hawaii, a short-finned pilot whale (Globicephala macrorhynchus) grabbed hold of a human swimmer, pulling her 10–12 meters underwater before letting her go. Although the swimmer was lucky not to have been drowned, she suffered a bite wound that required nine stitches.30

To date there has only been one record, in Brazil, of a bottlenose dolphin killing a person.34 The animal involved in the incident was a solitary male, named ‘Tiao by locals, with a history of approaching human swimmers as well as of inflicting injuries: 29 swimmers had reported injuries, mostly as a result of the humans “harassing” the dolphin by grabbing his fins or trying to jump on his back. Arguably these people were only trying to do the very things that dolphin trainers are regularly observed doing to and with dolphins at dolphinaria. Eventually, on 8 December 1994, the dolphin rammed a man (who was reported to be attempting to put objects into the dolphin’s blowhole), rupturing the man’s stomach and causing his death.

Despite the bottlenose dolphin’s ability and propensity for aggression, captive orcas are the marine mammals most associated with human injuries and deaths. In 1991, a group of orcas killed trainer Kellie Byrne at Sealand of Victoria, Canada. In front of a shocked audience, the orcas held Byrne underwater until she drowned. Eight years later, one of those same orcas, Tillikum, was discovered one morning with the dead body of a man, named Daniel Dukes, draped on his back at SeaWorld Orlando. Dukes had also drowned and suffered a host of minor injuries incurred both pre- and postmortem, suggesting that Tillikum had once again held a person underwater until he died. Dukes had apparently either snuck into the facility at night or stayed in the park after closing in an attempt to swim with the whale, calling into question the park’s security procedures.35

The risks to people posed by interactions with orcas were also seen when a young orca called Ky attacked his trainer, Steve Aibel, at SeaWorld San Antonio in July 2004. During a show, the animal hit Aibel, pushed him underwater, and positioned himself between the trainer and the exit ramp of the pool. Aibel was rescued from the whale by another staff member only after several minutes of being unable to bring the animal under his control.19 In November 2006, the orca Kasatka held trainer Ken Peters underwater by his foot, at SeaWorld San Diego.20 On 6 October 2007, trainer Claudia Volkhardt was injured by an orca named Tekoa at the dolphinarium Loro Parque, in Tenerife, Canary Islands. The whale broke the trainer’s forearm in two places and inflicted chest injuries.46 The risks to trainers posed by captive orcas were thoroughly considered and summarized in the narrative summary and information memorandum initially prepared by an inspector for California’s Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) after the incident with Kasatka and Ken Peters in 2006. SeaWorld managers had notified Cal/OSHA of the

It would never be acceptable for zoos to allow visitors to interact freely in an enclosed space with chimpanzees, gorillas, lions, or elephants. It is folly to regard interactions with marine mammals as safer than those with other large wildlife species.

Even trained caretakers must exercise extreme care to avoid being bitten by their charges. Photo: ©Paints, Inc.
The irony of the ocean beckoning just beyond the wall of a SWTD enclosure is lost on the participants. Better education is needed to impress upon those who love dolphins that we wish to be with them more than they wish to be with us. Photo: Toni G. Frohoff

November incident the next day as a matter of routine, due to the serious nature of the injury. However, routine is a matter of perspective. SeaWorld saw the incident as a minor employee injury, but after a thorough review of this and other trainer-orca incidents (see above), the state inspector came to a different conclusion: “In the simplest of terms...swimming with captive orcas is inherently dangerous and if someone hasn’t been killed already it is only a matter of time before it does happen.”

Cetaceans routinely kill mammals in the wild—even members of their own species. Humans are also mammals, equal in size or typically smaller than many of the mammals killed by bottlenose dolphins or orcas. It is extremely foolish to think that somehow the rules do not apply to humans. We are not immune to aggression or injury by cetaceans. As the number of swim-with-marine-mammal facilities increases, particularly in regions where there are few or no safety regulations, safeguards, or reporting requirements, so the likelihood of more human injuries and deaths also increases.

It would never be acceptable for zoos to allow visitors to interact freely in an enclosed space with chimpanzees, gorillas, lions, or elephants. It is folly to regard interactions with marine mammals as safer than those with other large wildlife species.

Dolphins rarely leave the water to “beach” themselves like this in nature—this common feature of dolphinarium performances is therefore misleading rather than educational. Photo: ©iStockphoto.com/Hannu Liivaar
CHAPTER 6

Behavior

The natural foraging behaviors of most predators in captivity are severely compromised. While all species of marine mammals held in captivity (with the exception of manatees and dugongs) are predators, none are allowed to exercise that part of their behavioral repertoire that is related to hunting and foraging. For display-only animals, such as polar bears and most seals, boredom is a serious concern. Stereotyped behaviors, severe aggression toward conspecifics and humans, and other behavioral problems frequently arise in predators denied their natural foraging behavior.

Public display facilities claim that for those marine mammals who perform in shows, training adequately replaces the stimulation of hunting. This claim is without proof or indeed logic. Performing animals are trained to demonstrate a series of conditioned behaviors. Some of these behaviors are also naturally occurring behaviors, but many are merely based on natural behaviors that have been performed out of context and exaggerated and altered almost beyond recognition. The most common training method, called operant conditioning, uses food as a primary positive reinforcer. For some animals, this means that satisfaction of hunger is dependent on performing tricks; for others, hunger is deliberately induced so the reinforcer will be effective. This is not food depriva-

Natural behaviors and interactions, such as those associated with mating, maternal care, weaning, and dominance, are altered significantly in captivity. In most cases, these behaviors are strictly controlled by the needs of the facility and the availability of space. The needs of the animals are considered secondary.

The sheer joy of this dolphin's leap in the air is lost when the behavior is controlled by a trainer's command and repeated on cue in a performance. Photo: @istockphoto.com/Kristian Sekulic

feeding and foraging rhythms and cycles, as well as independence of any kind, are lost. It is difficult to accept the self-serving argument put forward by the public display industry that training provides an adequate substitute for the stimulation of natural foraging or the other actions exhibited by wild animals.

Most pinniped shows are entertainment spectacles in which animals perform in a burlesque, exhibiting a series of wholly artificial tricks, such as "handstands" and balancing a ball, in the context of a cartoon story in which raucous music is played and jokes are told. Many dolphin and whale shows incorporate circus tricks such as trainers propelled into the air by an animal's snout or animals taking fish from a trainer's mouth. The animals are presented as clowns, and almost no effort is made to educate the audience about their natural behavior.
This dolphin has been fitted with a transmitter for research purposes. The trauma of capture and the brutal attachment of this large tag will undoubtedly compromise any data collected. Photo: Elsa Nature Conservancy

Natural behaviors and social interactions, such as those associated with mating, maternal care, weaning, and dominance, are altered significantly in captivity. In most cases, these behaviors are strictly controlled by the needs of the facility and the availability of space. The needs of the animals are considered secondary.

For instance, weaning is timed to suit the needs of the facility, as opposed to the needs of the pup, cub, or calf, because the offspring may be disruptive to the social group or because space is limited. Dominance interactions can be aberrant and abnormally violent, as the animals must adjust their behaviors in response to the small living space and the artificial age and sex composition of the captive social group.

Wild-caught captive marine mammals gradually experience the atrophy of many of their natural behaviors. Many are caught too young to have learned how to socialize properly and form relationships. For sea lions and cetaceans in particular, socialization and learned behavior and skills are undoubtedly crucial to normal and natural development.

Sea lions are usually found in large groups. This natural tendency can rarely be accommodated in captivity and in some cases captive social groups are completely artificial. This can cause stress. Photo: BigStockPhoto/Eric Gevaert
CHAPTER 7

Stress

Stress has been recognized and discussed in this report as a factor that can severely affect the health of captive wildlife, including marine mammals.\(^{203}\) Stress in mammals can manifest in many ways, including weight loss, lack of appetite, anti-social behavior, reduced calving success, arteriosclerosis (hardening of the arteries), stomach ulcers, changes in blood cell counts, increased susceptibility to diseases (reduced immune response), and even death.\(^{204}\) Short-term acute stress will occur as the result of pursuit, confinement, and physical handling experienced during capture or the transport process.\(^{205}\) Long-term chronic stress will result once an animal is permanently confined in captivity.

The pursuit, handling, and disturbance marine mammals endure when first captured from the wild and whenever they are being transported from one location to another are highly traumatic.\(^{206}\) Scientific studies have noted significant physiological impacts from pursuit and handling, particularly in cetaceans.\(^{207}\) A strong piece of evidence showing that dolphins never become accustomed to these causes of stress is seen in the greatly increased mortality rate they demonstrate immediately after every transport. As noted earlier, the risk of dying increases six-fold in bottlenose dolphins during the first five days after a capture, and a similar mortality spike is seen after every transport between facilities.\(^{208}\) In other words, every transport is as traumatic to a dolphin as a capture from the wild. They never get used to being restrained and moved between enclosures, and the stress considerably increases their risk of dying.\(^{209}\) It is notable that when researchers have calculated mortality rates for cetaceans in captivity, this period of sharply increased mortality has been excluded from their calculations, resulting in an overall captive survival rate that is artificially inflated.\(^{210}\)

Confinement exacerbates stressful situations for marine mammals in many ways. Captive animals are in artificial social groupings determined by humans, in small restricted areas, and the social pressures and stress they experience can escalate when they have no avenue for escape. In dolphins, for example, adding new members to a captive group—such as young animals reaching maturity—placed incompatible animals into groups can upset the group’s social dynamics and dominance hierarchies, as can isolating individual animals or separating them from their associates.\(^{211}\) These circumstances can lead to increased aggression, illness, poor success in calf rearing, and even death.

The effects of socially inflicted stress in captivity were illustrated in a 2002 study, which described how seemingly innocuous changes in dolphin groupings and associations could actually cause extreme stress, leading to chronic illness and death.\(^{212}\) In an
The very traits that make dolphins easy to train and fascinating for audiences—their intelligence and self-awareness—arguably make confining them for entertainment purposes unethical. Photo: WSPA

attempt to mitigate these problems, the researchers suggested that dolphin enclosures should be expanded to allow less restricted movement of animals. This recommendation was particularly important for one animal, who had exhibited chronic illness believed to be stress-related and had been subjected to considerable aggression by other dolphins. In a larger enclosure, this individual's symptoms subsided to some degree, as she could more easily avoid aggressors.

Similar stress is suffered by other social marine mammal species, such as most pinnipeds, but also some solitary species, like polar bears. In captivity, polar bears are often placed in highly unnatural groupings—in the wild, they are usually solitary except when breeding or with young (and in some locations when waiting for ice to form). The forced intimacy faced by three or four (or more) polar bears in a small zoo enclosure inevitably leads to stress.

This polar bear sits alone on the ice—physically and socially the norm for this species in the wild. In captivity too many bears in too-warm enclosures is far too often their lot. Photo: ©2009 JUPITERIMAGES Corporation
CHAPTER 8

Cetacean Intelligence

One of the primary foundations for the moral and ethical arguments against keeping cetaceans in captivity is that they are intelligent. Ironically it is their intelligence that has made these animals desirable for public display—their ability to understand human commands and learn complex behaviors or tricks has been exploited to provide humans with entertainment. Likewise their intelligence increases people’s rapport with and interest in these animals. But exactly how intelligent are cetaceans?

A recent debate on this topic resulted when a researcher named Paul Manger postulated that the dolphin’s large brain could have evolved for physiological reasons having to do with body temperature regulation. In his paper, he offered what he considered substantial evidence that dolphins were no more intelligent than many terrestrial ungulates (to which cetaceans are evolutionarily related). However, a rebuttal to this hypothesis from several prominent cetacean biologists summarized far more thoroughly the large and growing body of literature examining small cetacean intelligence and social sophistication. In addition, these researchers noted the temperature regulation hypothesis required a series of geologic events during the dolphin’s evolution that did not match the paleontological record. Essentially Manger’s hypothesis requires either misinterpreting or ignoring a considerable amount of the science addressing cetacean intelligence, reducing its legitimacy.

Most studies demonstrating cetacean intelligence have been conducted on captive animals, albeit primarily in dedicated research facilities or non-profit public display facilities. Yet as these captive animals increasingly provide information to their captors about their sentience and intelligence, the ethical and moral arguments opposing cetacean captivity become increasingly convincing.

Several studies have tried to assess marine mammal intelligence by looking at the ratio between the size of the brain and the mass of the animal. Although dolphins have smaller brains relative to their size than modern humans have, they would be at least as intelligent as prehistoric humans according to this measure.

The alert expression on this dolphin’s face is almost certainly a true reflection of the active mind behind it.

However, this measure does not take into account several issues, one being that the structure of the dolphin brain is very different from that of humans. If anything, those parts that deal with sophisticated thought and cognition are more complex and have a relatively greater volume than similar tissues in humans. Another issue is that these calculations do not take into account the high proportion of a cetacean’s mass that is blubber, a tissue that needs no brain mass dedicated to its maintenance. Upon consideration of these factors, the potential for intelligence in dolphins then becomes far more comparable to that of humans.
The behavior of cetaceans also implies high intelligence; for example, bottlenose dolphins are widely believed to possess individual, or signature, whistles, which are thought to be important for individual recognition or keeping groups together. Animals in the wild will make their specific whistles, which will be copied by nearby dolphins. This is an example of dolphins "addressing each other individually," i.e., using the whistles in a way similar to humans using names. Dolphins are the only non-human animals known to communicate in such a way, which in itself is believed to have been a key step in the evolution of human language.

Similar calls, although not as obviously specific to individuals, have also been reported in comparable contexts in orcas.

The complexity of cetacean communication has often been used as a potential indicator of intelligence, and a study examining the complexity of cetacean vocalizations discovered that the "communication capacity," or the ability to carry information, of dolphin whistles is similar to many human languages. This suggests that cetaceans could potentially be speaking their own language, which, as far as we currently know, would make them the only animals besides humans to do so.

In addition, research has shown that cetaceans have the capacity for vocal learning. Other research has demonstrated that bottlenose dolphins can be taught to imitate computer-generated sounds and to use these sounds to label or "name" objects.

One of the most successful and illuminating cetacean linguistic studies was conducted by Louis Herman, who taught bottlenose dolphins a simple sign language and a computer-generated sound language. This study determined that, using these artificial symbolic languages, dolphins could understand simple sentences and novel combinations of words, but most importantly that cetaceans comprehended sentence structure (syntax)—an advanced linguistic concept. Interestingly, while we have been able to teach dolphins relatively sophisticated artificial languages, we have been unable to decode their many vocalizations, which may very well be a language. This begs the question of which species is "smarter"—dolphins, who can learn and understand what people want of them, or humans, who have yet to learn or understand what dolphins might be telling us.

Scientists have also shown that cetaceans are able to grasp abstract concepts. One of the most intriguing discoveries is that dolphins are able to discriminate between numbers of objects. Initial tests showed that dolphins can, at the very least, distinguish between a "few" and "many" objects and numerically "tuss.

In his book The Ethics of Science, David Rosen highlights eight factors potentially possessed by animals. The more of these factors a species possesses, the more it should be considered morally and ethically equivalent to humans. It could be argued that bottlenose dolphins have demonstrated—or have demonstrated the potential for—at least seven of these eight factors, more than any other animal species.
Being able to distinguish between numbers of items is believed to be a uniquely human attribute that is possibly linked to the possession of a complex language.24

Perhaps the most compelling evidence for a high level of intelligence in cetaceans is the recent demonstration that cetaceans are self-aware. These studies involve cetaceans recognizing their image in a mirror and, in addition, using that image to investigate their body.25 Researchers marked bottlenose dolphins with zinc oxide cream or marker pens in locations the dolphins could see only with a reflection, and the dolphins immediately swam to inspect themselves in a mirror placed in their pool. This showed that the dolphins were able to deduce that the images they saw in the mirror were actually of themselves and not simply another dolphin (or nothing relevant to "real life" at all, for that matter—some species have no reaction to two-dimensional mirror reflections). The dolphins used the mirrors as tools to view themselves, positioning themselves so that they could use the mirror to view the parts of their body that had been marked. These are all indicators of self-awareness.

Previously only the great apes had demonstrated self-recognition, and these results were not consistent for all subjects.26 In humans the ability to recognize one’s own image in a mirror does not appear until the age of two.27 Therefore, it can be argued that bottlenose dolphins have a level of understanding comparable to that of a two-year-old child,28 although the linguistic skills of cetaceans hint at intelligence far more developed. Locking two or three young children in a small room 24 hours a day—even one with a window and a dog for a companion during the day—would be considered child abuse. Yet confining dolphins in an equivalent space for their lifetime—with a human caretaker to interact with during business hours—is standard practice for dolphinariums and aquaria.

In his book The Ethics of Science, David Runie highlights eight factors potentially possessed by animals.29 The more of these factors a species possesses, the more it should be considered morally and ethically equivalent to humans. It could be argued that bottlenose dolphins have demonstrated—or have demonstrated the potential for—at least seven of these eight factors, more than any other animal species.30 Therefore, actions that would be considered unethical, immoral, illegal, or inappropriate for humans should be considered unethical to a similar extent for bottlenose dolphins (at a minimum) as well.

It should be noted that dolphins are held in captivity not only for entertainment and research purposes, but also for military uses. The U.S. Navy has maintained a marine mammal program, at one time holding more than 100 dolphins, some belugas and orcas, and dozens of pinnipeds, since the 1960s. The present program holds about 75 dolphins and 25 sea lions. Initially held to study their streamlined body shape—in an effort to improve hydrodynamics of Navy torpedoes—and echolocation, eventually the dolphins and sea lions were trained to perform tasks otherwise considered difficult, impossible, or unsafe for human divers, such as retrieving objects from deep water or placing location beacons on mines.31 These animals have been deployed around the world, during combat conditions (in Vietnam and the Persian Gulf) and during peacetime maneuvers and exercises. As with public display, it is the dolphins’ intelligence that makes them desirable to the military, but their reliability as soldiers is questionable.32 More to the point, the ethical questions raised by using animals who may merit the moral stature of human toddlers for military purposes are profound. Human divers know they are in danger in combat zones; dolphins do not.

Beluga whales make an amazing range of sounds (they are known as “sea canaries”) and most of the tricks they learn in captivity are related to this ability.
Most zoos and aquaria currently obtain polar bears from captive-bred stock. Nevertheless, these animals are supremely well-adapted to the Arctic climate, even when they have never experienced it directly. Photo: ©2009 JUPITERIMAGES Corporation
CHAPTER 9

Mortality and Birth Rates

A
imals die, in captivity and in the wild. The simple fact that an animal dies in a zoo or aquarium is not notable in itself. The questions to ask are:

What was the cause of death? How old was he or she?

Many animal protection advocates who oppose captivity believe every death demonstrates that captivity kills, but this is overly simplistic. On the opposite end of the spectrum, zoo officials usually label every death “natural.” The truth is obviously somewhere in between, but the public display industry, with its proprietary access to the relevant data, has been lax in defining where that truth lies. Veterinary record-keeping and research into causes of death have lagged behind the public’s interest in the welfare of captive wildlife.²⁸

PINNIPEDS AND OTHER NON-CETACEANS

The annual mortality rates of seals and sea lions in captivity range from 2.23 percent for Steller sea lions (Eumetopias jubatus) to 11.6 percent for northern fur seals (Callorhinus ursinus).²⁹ There is little information from the wild with which to compare the mortality rates of captive seals and sea lions, but from limited data, captive Steller sea lions seem to show mortality rates similar to or lower than their wild counterparts.³⁰ Mortality rates of captive-born pups for some species, such as the California sea lion, are lower than in the wild,²⁸ but for others, captive pup mortality rates are relatively high. Two-thirds of captive South American sea lions (Otaria flavescens) and northern fur seals die in their first year,²⁸ a rate that may be higher than experienced in the wild. Comparatively, captive sea otters appear to fare better in terms of life expectancy, although how this compares to wild populations is unknown.²⁸

Few of the California sea lions now held in dolphinarium zoos were captured from the wild.

Many of the currently available methods used to control reproduction may have long-term detrimental effects, and further research is needed to develop less-harmful contraceptive methods.²²

As noted earlier, most aquaria and zoos currently obtain polar bears from captive-bred stock. However, sea otters, walruses (as noted earlier), manatees, and a handful of other pinniped species,

Surplus captive-bred animals have now become a problem in many cases, and facilities are concerned with reducing the fecundity of these species. Many of the currently available methods used to control reproduction may have long-term detrimental effects, and further research is needed to develop less-harmful contraceptive methods.

such as northern elephant seals (Mirounga angustirostris) and Steller sea lions, are still acquired from the wild for the most part. All of these species have had relatively small populations in captivity, and data on their life history parameters are limited.
For most pinniped species in captivity, captive breeding has been successful and the goal now is to limit pregnancies. Photo: BigStockPhoto/Glenda Powers

**BOTTLENOSE DOLPHINS**

Some studies indicate that captive bottlenose dolphins live as long as and have the same mortality rates as their counterparts in the wild. Other studies, however, continue to indicate a higher year-to-year mortality rate for animals in captivity than for those in the wild (Table 1). The failure of captive dolphins to exhibit a higher survival rate in spite of 70 years of maintaining this species in captivity disputes the public display industry's oft-stated contention that captivity enhances survival by keeping animals safe from predators, parasites, and pollution and by providing animals with regular feeding and ever-improving veterinary care.

The reproductive history of bottlenose dolphins shows a similar pattern. Although calves are now born routinely in captivity, captive-born calf mortality rates fail to show a clear improvement over the wild. As predation—a significant source of calf mortality in the wild—is not a risk factor in captivity and veterinary supervision is intensive when a calf is born, this failure to demonstrate higher calf survivorship is disturbing. Causes of death for captive-born calves include lack of maternal skill, lack of proper fetal development, and abnormal aggression from other animals in artificial social environments and confined spaces.

**ORCAS AND OTHER SMALL WHALES**

Several small whale species are commonly held in captivity, and their mortality rates are much higher than the rate for bottlenose dolphins. Orcas and beluga whales are the small whales most often seen in captivity; false killer whales are also popular.

Of at least 193 orcas held in captivity since 1961 (wild-caught or captive-bom), 151 (78 percent) are now dead. Almost all of the orcas in the United States, and about half of the captive orcas kept worldwide, are owned by SeaWorld. For years the corporation persistently and erroneously maintained that the maximum life span of orcas was 35 years, but its website now states instead that “no one knows for sure how long killer whales live,” and that they live “at least” 35 years. In fact, a peer-reviewed study using established methods of photo-identification and conducted since the early 1970s has identified several orcas in Washington State and British Columbia who are at least 50 years of age now. First observed in 1973 as adults (at least 15 years of age), they are still alive today. The maximum life span for orcas is currently estimated to be 60 years for males and 80 or 90 years for females.

Various analytical approaches have demonstrated that the overall mortality rate of captive orcas is at least two and a half times as high as that of wild orcas (see Table 1), and age- and sex-specific annual mortality rates range from two to six times as high. Twenty-two orcas have died at SeaWorld parks since 1985: four were young calves, and the others were in their teens and twenties. To date, less than 20 orcas are known to have survived more than 20 years in captivity, and only two have survived in captivity for more than 35 years. As stated earlier, captivity eliminates the uncertainties of foraging and the pressures of avoiding predators, pollution, and parasites while it provides veterinary care. Nevertheless, captive orcas continue to experience a greatly and significantly increased risk of dying at any given time in life than do wild orcas. Their size and complex physical and social requirements clearly cause them to suffer serious negative consequences when they are confined in tanks.
The display industry engages in hypocritical reasoning. On the one hand, it claims that captivity is safer than the wild, in which case the mortality rates of captive-born calves (and captive adults, for that matter) should be lower than in the wild. On the other hand, after every failed birth, it states that captive infant mortality rates similar to those in the wild should be acceptable.

As for birth rates, after more than 45 years in which at least 193 orcas have been held in captivity, with 83 known pregnancies, only 40 viable calves (surviving past one year) have been produced (a 51.8 percent mortality rate). Therefore, orca birth rates and infant mortality rates have been at best the same or slightly better in captivity than in the wild, but, given that some captive data are almost certainly missing, are likely to have been worse. This parallels the high infant mortality rates observed for other wide-ranging predator species in captivity, a situation that scientists have ascribed to stress and physiological dysfunction.

The public display industry often states that the high infant mortality rate in captivity is unsurprising, given the high infant mortality rate in the wild, but this position contradicts the industry's argument that captivity shields wildlife from the rigors of the harsh natural environment. The display industry engages in hypocritical reasoning. On the one hand, it claims that captivity is safer than the wild, in which case the mortality rates of captive-born calves (and captive adults, for that matter) should be lower than in the wild. On the other hand, after every failed birth, it states that captive infant mortality rates similar to those in the wild should be expected and acceptable.

Not enough is known about the life history parameters of wild belugas or false killer whales to make a legitimate comparison between wild and captive populations of these species at this time. However, preliminary analyses of the small database for beluga whales indicate that this species may demonstrate increased mortality in captivity. Recent re-evaluation of ageing techniques suggests, in fact, that beluga whales may have maximum life spans far greater than previously thought. Sectioning teeth and counting growth rings, the previously accepted method by which beluga ages were determined, may underestimate age by a factor of two, meaning wild beluga whales, previously thought to have a maximum life span of 30 years, can actually live as long as 60 years.

In captivity, beluga whales routinely die before they reach 30 years of age—very few have surpassed this milestone. The captive-birth rates for these two species are not impressive either; there was only one surviving captive-born false killer whale and six living captive-born belugas recorded in the June 2006 Marine Mammal Inventory Report.

OTHER CETACEAN SPECIES

Other dolphins and whales—such as Pacific and Atlantic white-sided dolphins (*Lagenorhynchus* spp.), common dolphins (*Delphinus delphis*), and pilot whales (*Globicephala* spp.)—have been maintained in captivity with varying levels of success. Most have not been successfully bred. All have comparatively small captive populations, and a significant increase in numbers would be required to support any kind of breeding population.

As most of these species are not known to be endangered, it would be biologically inappropriate and unjustified from a conservation standpoint, as well as inhumane, to increase the number in captivity, especially when success at maintaining them in captivity has been inconsistent at best.

CONCLUSION

The relative success of a captive-breeding program should not be considered evidence of the suitability of any particular species to captivity. Most animals, even those held in suboptimal conditions, will mate if given the chance. While unsuccessful attempts at

Of the orcas held in captivity since 1961—both wild-caught and captive-born—78 percent are dead. Few would be considered old by wild standards if they were still alive.

breeding may indicate that a species is not adjusting to captivity, successful breeding in itself does not indicate the opposite. California sea lions are a good case in point: In many ways, captive sea lions literally have nothing else to do but breed if the opportunity presents itself.

The scientific community has been reluctant to draw conclusions about the mortality patterns of cetaceans in captivity. It maintains that the limited data sets both from wild and captive populations make it impossible to determine definitive differences in mortality and life spans. The scientific community also invokes differences between facilities, sex- and age-related factors, the differing sources of mortality in the two environments, and the methods and criteria for recording data, implying that comparing life history parameters from the two environments may be like comparing apples to oranges.
What replaces, with equal impact, predators, food shortages, storms, ship strikes, fishing gear entanglement, and other causes of death in the wild once a marine mammal is in captivity? One obvious culprit is a degree and form of stress that is uniquely suffered by confined animals.

In fact, it is true that causes of death in captivity are quite different from those in the wild; however, the mortality data, at least for bottlenose dolphins and orcas, indicate that the former are at least as efficient as (and probably more efficient than) the latter. What replaces, with equal impact, predators, food shortages, storms, ship strikes, fishing gear entanglement, and other causes of death in the wild once a marine mammal is in captivity? One obvious culprit is a degree and form of stress that is uniquely suffered by confined animals.

In the end, the arguments of the scientific community dismissing life history comparisons between wild and captive marine mammals are in many ways irrelevant. Regardless of whether it can yet be definitively, statistically determined that mortality and life spans differ between captivity and the wild, it is a fact that seemingly healthy captive cetaceans die at relatively early ages on a regular basis, usually with little or no warning. The cited causes of death are frequently indeterminate, such as pneumonia (which can be caused by many different circumstances) or drowning.

New research shows that previous methodologies halved the true ages of belugas—captive animals should live 50–60 years, but they rarely make it past 30 and most die in their teens and twenties. Photo: BigStockPhoto/Alekshey Trefilov

But according to the industry’s own arguments, cetaceans should experience vastly improved survivorship profiles, both for adults and calves, when exposed to modern veterinary care and safety from natural and human-caused hazards. Yet this has not happened for cetaceans, even after decades of captive maintenance.

In the wild, dolphins face many threats. In captivity, they do not, yet at best they live only as long as in the wild. Despite this dolphin’s “smile,” she may be suffering from stress—enough stress to shorten her life. Photo: BigStockPhoto/Brenda Irigoyen
CHAPTER 10

Conclusion

The tide may be turning for captive marine mammals, particularly cetaceans. In the United States, at least 13 dolphin exhibits have closed in the last decade and a half, while during the same time frame only four new exhibits have opened. In early 2005, Chile became the first country to ban outright the public display of most marine mammal species (as well as some sea birds), and also their import, export, and capture from the wild. Costa Rica joined it soon after, prohibiting the capture and public display of all cetaceans. In September 2005, the Netherlands Antilles determined that it would allow no more dolphin exhibits in its territories (it already has one and has issued a permit for another). Cyprus denied a request to set up a DAT facility in 2006. Some countries have banned the live import or export of cetaceans; these include Cyprus (imports are prohibited), Hungary (imports), India (imports), Argentina (imports from the Russian Federation), Vietnam (exports) and Malaysia (exports are prohibited, as are imports of marine mammal species already found in Malaysia). Mexico has prohibited the import and export of marine mammals.

Other nations have banned or enacted moratoriums on the live capture of cetaceans in their waters. These include Mexico, New Zealand, Brazil, Peru, Argentina (orca captures are prohibited), the Dominican Republic, Nicaragua, Australia, China (including Hong Kong), Indonesia (live captures of Irawaddy dolphins in the Mahakam River are prohibited), Laos (live captures of Mekong Irawaddy dolphins are prohibited), Malaysia, the Philippines, Singapore, and Thailand. The government of Antigua and Barbuda, after issuing a permit to a foreign company to capture as many as 12 dolphins annually from local waters, rescinded this permission after activists filed a lawsuit arguing the quota was unsustainable and that it violated regional conservation agreements. In a number of cases, municipal, provincial, and national governments have decided not to allow a dolphinarium or a cetacean exhibit to be built. Furthermore, some countries have implemented strict legislation for the keeping of cetaceans in captivity. Among these are the United Kingdom and Brazil, neither of which holds cetaceans in captivity, and Italy, which bans SWTD attractions and other human-dolphin interactions.

In August 2008, Travelife, an initiative of International Tourism Services and the European Union, published a handbook for tourism providers on what to look for in tourism enterprises that utilize animals. Its purpose was to maximize the sustainability of the enterprises and the welfare of the animals involved. The handbook included a separate section on dolphinaria, a reflection both of the growing public interest in captive marine mammal welfare and a growing acknowledgment that marine mammals, especially cetaceans, do stand apart from many other species of captive wildlife. The handbook offered an extensive checklist for tourism providers to evaluate whether a dolphinarium was, at a minimum, following “best practices” for the public display industry. Although Travelife stopped short of recommending against offering excursions to dolphinaria, it recommended “that this

Swimming in endless circles is actually causing this orca’s dorsal fin to collapse to one side—in the wild, an orca’s fin grows upright, as the whale swims in a straight line through the ocean.

Photo: BigStockPhoto/Mike Liu
only occurs in areas where there is not the possibility of substituting this excursion with a whale/dolphin watching experience in the wild.\textsuperscript{29a}

All of these developments suggest that a paradigm shift may be underway. It is one that may take a step back for every two forward, but nevertheless, it is discernable. The media attention on controversial captures, unnecessary deaths, and inhumane transports is having an impact on the general public's perception of marine mammals in captivity. The impression of happy animals performing for treats is giving way to recognition of behind-the-scenes suffering.

In the preceding pages, The HSUS and WSPA have presented the case against capturing marine mammals and keeping them in captivity. Yet while humans can separate out and analyze each aspect of the existence of captive marine mammals, one fact must remain paramount: to the marine mammals, the experience of captivity is not a set of aspects that can be perceived separately. Instead, it is a whole, inescapable life. Therefore, while humans can subdivide the captive experience and even conclude that one aspect is more or less damaging to the animals than another, The HSUS and WSPA believe that the entire captive experience for marine mammals is so sterile and contrary to even the most basic elements of compassion and humanity that it should be rejected outright. It is unacceptable for marine mammals to be held in captivity for the purpose of public display.\textsuperscript{27}

Table 1

<table>
<thead>
<tr>
<th>SPECIES</th>
<th>Mortality Rate in Captivity</th>
<th>Mortality Rate in the Wild</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Study 1</td>
<td>Study 2</td>
</tr>
<tr>
<td>Bottlenose Dolphins</td>
<td>7.0%∗</td>
<td>7.4%∗</td>
</tr>
<tr>
<td>Orcas</td>
<td>7.0%∗</td>
<td>—</td>
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\textsuperscript{∗} Presented in original text as survivorship rates. All statistics are presented as reciprocal mortality rates in this table.

\textsuperscript{∗∗} Only non-calves were used to calculate this statistic.

\textsuperscript{∗∗∗} No statistical comparisons were made between captive statistics and any wild statistics.

\textsuperscript{**} These captive-mortality rates are higher than the given wild-mortality rates (dolphins, marginal significance, p=0.07; whales, highly significant, p<0.001). Please see the original text for a description of the statistical analysis used.

\textsuperscript{***} These captive-mortality rates are higher than the given wild-mortality rates (dolphins, marginal significance, 0.10<p<0.05; whales, highly significant compared to an all-animal mortality rate of 2.0 percent, p<0.005). Please see the original text for a description of the statistical analysis used.

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APPENDIX I

Case Studies of Live Captures

LA PAZ, MEXICO

The history of the La Paz dolphins is a dismal one. After their December 2000 capture, they were transported to the Dolphin Learning Center (DLC), a hastily constructed sea pen enclosure owned by an entrepreneurial local doctor, in front of a beach resort hotel. Dolphin advocates warned Mexican authorities and the DLC facility owner that the sea pen's location (near a sewage outfall and relatively heavy vessel traffic) and shallowness were substandard and could create serious problems for the dolphins. A video released of the transport of the animals, much of which was in wooden crates, showed footage of one of the animals being repeatedly dropped while being carried in a stretcher across a beach. Although the animal who was dropped managed to survive this treatment, another dolphin died within a few weeks of being brought into the facility. In response to the capture, and the fact that the capturing facility did not possess the appropriate permits for a live capture of cetaceans, the Mexican Environmental Enforcement Agency ordered the DLC dolphinarium shut down. However, the Mexican courts ruled against this closure in June 2001, and so the dolphins remained in captivity.

The situation was looking more hopeful when, in January 2002, Mexican authorities enacted a moratorium against capturing marine mammals in Mexican waters for commercial purposes. However, the captive dolphin industry has considerable influence in Mexico, and Mexican Environment Secretary Victor Lichtinger, a key opponent of the live captures, was replaced, his stance over the dolphin issue playing a part. Also, Victor Ramirez, the environmental protection official who had tried to shut down the dolphinarium, was fired. So the infamous “La Paz Seven” still remained in captivity, despite continued threats by the Mexican authorities to confiscate the illegally captured animals.

In September 2003, La Paz was hit by a hurricane, and although the human population prepared against the onslaught of the storm, nothing was done to similarly protect, or evacuate, the La Paz dolphins. Due to contamination of the dolphins’ pen—from the sewage outfall, just as dolphin advocates had predicted—the large amount of storm-tossed debris, and the stress associated with the event, three of the seven remaining dolphins died within days of the hurricane’s passing. In November 2003, a fourth dolphin died, reportedly from storm-inflicted health problems, following which Mexican authorities ordered the removal of the final three dolphins being held at the park to a nearby dolphinarium. Despite the urging of animal protection organizations, the transfer of the dolphins, rather than their rehabilitation and release, was carried out that same month.26

BAYAHIBE, DOMINICAN REPUBLIC

No surveys or other research had been conducted on the status of bottlenose dolphins inhabiting Dominican Republic waters prior to the capture of eight individuals near Bayahibe (off the southeast coast of the country) in August 2002. The captors told locals, however, that they were merely going out to conduct research on the dolphins, by attaching tags. The captures caused a furor locally, as community groups objected to “their” dolphins being taken, and to the lack of consideration of the impact the takes would have on the economically important local boat tours, which often included dolphin-watching. The capture also was severely criticized by the Dominican Republic Academy of Sciences.

The dolphins were taken to Manatí Park in Bávaro, a captive dolphin facility that presents dolphin shows and conducts SWTD ses-
sions. This facility had already courted controversy and coverage on European television over the state of the facilities and an attack on a child by one of the dolphins in the park. Although there are no known records of dolphin mortalities at Manati Park, local workers at the facility informed a WSPA representative that one day in 2000, four dolphins suddenly died, to be replaced the very next day by five new, but undocumented, animals.280

Although a permit had been issued for the August 2002 capture by governmental officials, this permit was invalidated by the fact that the waters of the national park (Parque Nacional del Este) where the capture took place were legally considered to be a marine mammal sanctuary, and such captures were prohibited.280 The captures were also in violation of international treaties, namely the Protocol Concerning Specially Protected Areas and Wildlife (SPAW Protocol) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention), to which the Dominican Republic is a party.280

Since the capture of the eight dolphins, it is believed that at least one of the animals has died, although it may be as many as three.280 In 2006, Manati Park applied to import four more dolphins from Cuba (to replace animals that appear to have died at the facility in Bávaro), but was denied permission by the Dominican Republic government. In December 2007 Manati Park’s second facility, Parques Tropicales (also called Dolphin Island), was accused of importing four dolphins from Cuba illegally, and was prosecuted by the Environment Minister. Ironically, despite acting in a manner that essentially undermines national and international environmental regulations, earning the ire of the nation’s leading scientific organization, and being prosecuted for illegal importation of dolphins, Manati Park tries to portray itself as a conservation, research, and education facility in its publicity materials.280

**SOLOMON ISLANDS**

In April 2003, the international animal protection community was alerted by reports circulated on the Internet of an ongoing capture of a large number of Indo-Pacific bottlenose dolphins, *Tursiops aduncus*, in the waters off Solomon Islands, an island state near Australia. Investigation led to the discovery that at least 94 animals were captured by local fishermen on behalf of foreign entrepreneurs and placed in makeshift pens, awaiting export to other countries,280 even though Solomon Islands was not a Party to CITES at that time.280 However, it was unknown how many other dolphins were injured or died during the capture process—anecdotal accounts suggested at least nine died, for an almost 10 percent mortality rate. The plan was to sell these dolphins to international buyers, with the first sale of 25 dolphins to Mexico completed in July 2003. As Mexico is a CITES signatory, it should only have purchased and imported the dolphins if the takes of dolphins were proven to be sustainable—but no population assessment had been carried out. Even veterinarians that attended the capture admitted, “The dolphin population is unknown due to the civil war when neither the government nor the rebels permitted people to study *Tursiops* for the purpose of estimating their numbers.”280

After international outcry about the capture, in September the IUCN Cetacean Specialist Group (CSG) sent a fact-finding mission to Solomon Islands to investigate the situation and subsequently reported:

No scientific assessment of the population-level effects of the removals of bottlenose dolphins in the Solomon Islands was undertaken in advance of the recent live-capture operations. Without any reliable data on numbers and population structure of bottlenose dolphins in this region, it is impossible to make a credible judgment about the impacts of this level of exploitation. Until such data are available, a non-detriment finding necessary under CITES Article IV is not possible. Therefore CITES Parties should not issue permits to import dolphins from the Solomon Islands. Unfortunately, this episode of live-capture was undertaken with little or no serious investment in assessing the conservation implications for the affected dolphin population(s).280

Accompanied by a non-detriment finding (NDF) that was unsubstantiated by any scientific information, the 28 dolphins destined for Mexico were exported on 21 July 2003 to a dolphinarium in Cancún, where one animal died within a week of transport. Mexican CITES officials subsequently declared that they would not accept any more dolphins from Solomon Islands (though permits had been granted to import 100 animals) and, indeed, these officials had misgivings about any wildlife trade with a country not a party to CITES.280 To date, there have been no further imports of dolphins into Mexico from Solomon Islands.

In January 2005, the Solomon Islands government announced a provisional ban on exports of live dolphins. However, in mid-2007 Solomon Islands became a Party to CITES and lifted the ban. On 17 October 2007, 28 *T. aduncus* were exported to Dubai in the United Arab Emirates (UAE). This export was accompanied by considerable media attention, especially after three bottlenose dolphin carcasses were found in a public garbage dump in Solomon Islands soon after the export, near the pen where the dolphins had been held before transport.289
These dolphins were captured in a massive round-up in Solomon Islands of at least 94 dolphins, the largest single live capture operation recorded in history. Photos: WSPA

Prior to the export, experts again advised against it on scientific grounds (or lack thereof) to authorities in Solomon Islands and the UAE, as well as to the CITES Secretariat. After the Mexican import, the next CITES Conference of the Parties had passed yet another resolution emphasizing that "decision-making regarding the level of sustainable exports must be scientifically based." Moreover, an annual export quota of 100 dolphins a year was proposed. The Solomon Islands government claimed that the new NDF was science-based and referred to the relevant research in its documentation: four days of boat trips in 2005 and eight days in 2007, during which 31 miles of coastline were surveyed. Animals encountered were photographed and identified individually. 32 were identified in 2005 and 46 in 2007, of which seven (i.e., 15 percent of the second sample) were the same animals. Such a high re-sighting rate suggests a relatively small, resident population in this location (approximately 350 animals), using an appropriate analysis known as "mark-recapture." However, the Solomon Islands government did not use this analysis method; instead, it took the estimated number of animals sighted on these trips, divided by the amount of coastline traversed, deriving 4.1 dolphins per mile traveled. It then multiplied this number by the total length of coastline of Solomon Islands, giving an extrapolated estimate of 13,530 animals. To say the least, is an invalid methodology, as there is no available scientific information to show that Indo-Pacific bottlenose dolphins occur anywhere in Solomon Islands other than the small area surveyed or at what densities.

Despite the concerns expressed by the IUCN CSG, Willem Wijstekers, the Secretary-General of CITES, issued a statement on 15 October 2007, as follows: "the Secretariat has not been presented with any evidence [for Solomon Islands dolphins] which demonstrates that non-detriment findings are not being adequately made before exports are authorized." This directly dismisses and ignores statements made by the world’s foremost cetacean authorities, including experts from the Indo-Pacific region. Non-governmental organizations issued a joint rebuttal to the Secretary-General’s statement. Several Parties to CITES also expressed their concerns about the export to the Secretariat.

In 2008, another proposed export was announced, this time to a facility in Singapore. The experiences of the Mexican government during the 2005 export, and concerns for the welfare of the animals sent to Dubai and to be exported to Singapore, led the Chairman of the Mexican Congressional Committee of Environment, Natural Resources and Fisheries to send a letter to the relevant authorities in Singapore. He highlighted the high mortality rates suffered by the animals traded in 2003 and the adverse publicity suffered by the Mexican government over this trade.

In addition, the government of Israel expressed its concerns about the Solomon Islands trade in dolphins to the IUCN CITES Animals Committee in April 2008. This Committee, which provides scientific advice and guidance on animal species in trade, undertakes a process called the Significant Trade Review. Israel recommended that T. aduncus be included in the Significant Trade Review. As the question is whether or not Solomon Islands is issuing valid NDFs for its trade in T. aduncus, it seemed a logical candidate for the Review. However, the Animals Committee deferred consideration of Israel’s recommendation until after a planned IUCN Species Survival Commission/Cetacean Specialist Group workshop in Samoa to discuss and review the capture and export of T. aduncus. The Committee’s decision to postpone an examination of the Solomon Islands NDF, given the obvious problems, may be seen as politically sensitive, but it is also a dismissal of the importance of science in CITES decision-making. The subsequent characterization of this postponement by the Solomon Islands government as “CITES approval” of its dolphin trade demonstrates the pitfalls of delaying a frank assessment of the situation.

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The Solomon Islands government has issued at least five licenses for dolphin exports. At least one of these is in the hands of the original capture operator, whose pens continue to hold several dolphins. Another company is also holding several dolphins, in a separate location. It has been reported that Asian trainers have been in the country seeking animals.36

In November 2008, a NDF workshop was held in Mexico, where the situation with Solomon Islands dolphins was presented as a case study.37 Despite the conclusion by the workshop (echoing the participants of the Samoa workshop in August 2008) that no valid, credible NDF can currently be issued for Solomon Islands T. aduncus, yet another trade occurred on 8 December 2008, when seven Solomon Islands dolphins were shipped to the Philippines, reportedly to be trained at Ocean Adventure, a dolphinarium in Subic Bay, before being sent on to Singapore. Another 11 dolphins were shipped to the Philippines in January 2009, after one cargo company cancelled its contract to transport the animals and another then agreed to do the job. At the time of this edition’s publication, Singapore had not made a final decision regarding the import of Solomon Islands dolphins, directly from Solomon Islands or via the Philippines.

The fate of some of the 28 dolphins who were sent to Dubai’s Atlantis Palm Resort in late 2007 remains unknown (24 have been reported to be on display), as there is little transparency there. The dolphinarium opened to the public in November 2008.
INTRODUCTION

1 Examples of such agreements include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region's Protocol Concerning Specially Protected Areas and Wildlife (the SPAW Protocol of the Cartagena Convention). However, it is notable that these agreements generally fail to define what is meant by "educational" or specifically how public display furthers conservation.

2 Life-history data on seals, sea lions, whales, dolphins, and porpoises are maintained by the Department of Commerce's National Marine Fisheries Service (NMFS) in its Marine Mammal Inventory Report (Silver Spring), which is updated periodically. Dolphinarium, aquaria, and zoos are not required to submit such inventory records on polar bears (Ursus maritimus), sea otters (Enhydra lutris), walruses (Odobenus rosmarus), manatees (Trichechus manatus), and dugongs (Dugong dugon); these species are under the authority of the Department of Interior's U.S. Fish and Wildlife Service (FWS). The United States is one of the only countries to require such an inventory.


4 Whales, dolphins, and porpoises (cetaceans) are exhibited in at least 49 countries. Couquiud, "A survey of the environments of cetaceans in human care: Survey of international cetacean facilities," 311–319. Activist reports also record dolphin displays in countries such as Cambodia, Vietnam, and Mauritius, which were not listed in Couquiud's 2006 publication.

CHAPTER 1: EDUCATION, CONSERVATION, AND RESEARCH

Education

5 In 1988, the U.S. Marine Mammal Protection Act of 1972 (MMPA) was amended to require that permits for possessing marine mammals for public display purposes would be given only to applicants that used the animals in a conservation or education program that both adhered to "professionally recognized standards of the public display community" and was acceptable to the U.S. Secretary of Commerce and Interior. Another amendment in 1994 removed the need for secretarial approval, but the need to adhere to "professionally recognized standards" was maintained. At the time, such standards did not exist in a published form; therefore, the NMFS asked the American Zoo and Aquarium Association (AZA—now known as the Association of Zoos and Aquariums) and the Alliance of Marine Mammal Parks and Aquariums (AMMPA), two industry associations, to draft such standards. These standards (see, for example, http://www.aza.org/Accreditation/Documents/AccredStandPol.pdf) emphasize that "current scientific knowledge" must form the basis for education programs but are offered merely as guidelines rather than requirements, and many of the standards are ignored by dolphinariums—in some cases, all are. These industry standards are often used by facilities in other countries as a "best practices" template for their own guidelines—few nations have education program requirements.

6 A report on the impacts of zoos and aquaria on visitors stated, "Little to no systematic research regarding the impact of visits to individual zoos and aquaria on visitor conservation knowledge, awareness, affect, or behavior has been conducted and presented at conferences and/or subsequently published." L. D. Dietl and et al., Visitor Learning in Zoos and Aquariums: A Literature Review (Silver Spring, Maryland: American Zoo and Aquarium Association, 2001–2002), vi. A peer-reviewed article noted that "the educational impact that the zoo environment exerts on a typical visitor's awareness and understanding of other animal species has been poorly explored." L. S. Reade and N. K. Waran, "The modem zoo: How do people perceive zoo animals?" Applied Animal Behaviour Science 47 (1996): 109–118. A recent study by the Association of Zoos and Aquariums noted that zoos "have done little to assess [their] impact...While there is some evidence of zoo experiences resulting in changes in visitors' intention to act, there are few studies demonstrating actual changes in behavior." J. H. Foll et al., Why Zoos & Aquariums Matter: Assessing the Impact of a Visit (Silver Spring, Maryland: Association of Zoos and Aquariums, 2007), 5. This 2007 study was an attempt to address this data gap; however, the results suggested that very few (10 percent) zoo visitors increased their conservation-related knowledge base, while only about half were prompted to increase their conservation-related behavior. Over time, far fewer than half (20–40 percent) of visitors could still recall any animals or exhibits they had visited and the study did not even examine whether these visitors had actually increased their conservation-related behavior after their zoo visit.


8 Harris Interactive fielded this web-based survey on behalf of WSPA from 7–9 November 2007, interviewing a nationwide sample of 2,628 U.S. adults aged 18 years and older.

9 A telephone poll of 350 greater Vancouver residents was conducted 13–24 August 2003 by R. A. Malatest and Associates, Victoria, British Columbia, on behalf of Zoocheck Canada.

10 In a study on learning at American zoos, researchers showed that only about a third of visitors specifically went to the zoo to learn about animals and even fewer to learn about wildlife conservation. The majority of visitors cited that they were visiting for entertainment and recreation.

In her book on SeaWorld's corporate culture, Susan Davis, professor of communications at the University of California, San Diego, notes that "the Shamu show reveals very little actual scientific or natural historical information, and discussions of research goals and discoveries are hazy. True, not much can be packed into a twenty-minute performance, but a look at what is included reveals the audience is asked whether Shamu is a fish or a mammal and is told it is a mammal—but the definition of mammals, or the significance of mammalian status, or the importance of differences between marine mammals and fish is never discussed." S. G. Davis, Spectacular Nature: Corporate Culture and the Sea World Experience (Berkeley: University of California Press, 1997), 259.

As a result of the European Union Zoos Directive (Council Directive 1989/20/EC), all zoos and captive animal facilities in Europe (including dolphins) are legally obligated to provide educational materials on the natural habitats of displayed animals. This is not the case for facilities in North America and other parts of the world. Indeed, in a survey of members of the public near Marineland Ontario in Canada, only 28 percent agreed with the statement: "I have the feeling that aquariums or marine parks portray a real image of marine ecosystems." Jiang et al., "Public awareness and marine mammals in captivity," 245.

For example, the website for Indiana's Indianapolis Zoo used to state that the average life expectancy for bottlenose dolphins (Tursiops truncates) in the wild was 37 years. When it was pointed out that none of the facility's animals had to date survived past 21 years of age, the website was changed to report a life expectancy in the wild of only 17 years. S. Kestin, "What marine attractions say vs. the official record," South Florida Sun Sentinel, 17 May 2004.

Davis, Spectacular Nature.

Virtually all captive adult male orcas (Orcinus Orca) have fully collapsed dorsal fins and a large number of captive adult females have fully or partially collapsed dorsal fins. However, observations from the wild (for example, in British Columbia) show that only one to five percent of animals have fully collapsed fins. J. K. B. Ford et al., Killer Whales (Vancouver: University of British Columbia Press, 1994). Collapsed or missing dorsal fins are rare for any cetacean species and in wild orcas all reported fully collapsed fins have been on males and may be related to poor health or stress. R. W. Baird and A. M. Gogone, "False killer whale dorsal fin disfigurements as a possible indicator of long-term fishery interactions in Hawaiian waters," Pacific Science 59 (2005): 593-601. Nevertheless, in their educational materials, talks, and shows, many dolphins suggest that collapsed fins are genetic, heritable traits, like eye color. If the "drooping fin" syndrome are primarily genetic, one would expect animals in the populations from which the captive orcas were taken to exhibit such fins with relatively high frequency, but they do not.

SeaWorld has long shrouded or implied in its educational materials that wild orcas live no more than 35 years. For example, in its Killer Whale Animal InfoBook, SeaWorld states that "killer whales in the North Atlantic may live at least 35 years." http://seaorg1.org/rainier-info/ info-books/killer-whales/lolongevity.htm. However, scientific research indicates a maximum estimated life span of about 80 years for female and 60 years for male orcas. P. F. Orlovich et al., "Life history and population dynamics of resident killer whales (Orcinus Orca) in the coastal waters of British Columbia and Washington State," in Report of the International Whaling Commission, Special Issue 12 (1980): 239-242. See endnote 258 for more on this issue.

For example, a public aquarium commissioned a virtual beluga whale (Delphinapterus leucas) exhibit; computer-generated belugas whales responded as living whales would, using artificial intelligence programs that process live whale behavioral data. The researchers noted that "the simulation was realistic enough that it could influence even expert opinions on animal behavior," 108. S. DiPerna et al., "Experiencing belugas: Action selection for an Intuitive aquarium exhibit," Adaptive Behavior 15 (2007): 95-112.

If cetaceans were displayed in a traditional, nonperformance, zoo-like exhibit, they would not elicit the same unmatched enthusiasm as they do in shows. The exhibit (now defunct) with two Pacific white-sided dolphins (Lagenorhynchus obliquidens) at the San Francisco Steinhardt Aquarium is a perfect example. There was no show, and most patrons became bored after only minutes watching the two dolphins float or swim aimlessly in the small, barren tank; simply eliminating exploitative performances is therefore not a solution to the problems of public display.


Of 13 marine parks holding orcas captive in 2004, five provided information on whale and dolphin conservation. Five provided educational information for teachers, six provided information for children, and six had online information about whales. Only three facilities offered educational materials for sale. Yet 10 of these 13 facilities offered photographs of visitors taken in close proximity to an orca and six allowed visitors to feed orcas. M. Lack and Y. Jiang, "Keltie, Shamu and Friends: Educating visitors to marine parks and aquariums," Journal of Ecotourism 6 (2007): 127-158.

In a study on learning at American zoos, researchers found that the typical zoo visitor's concern for and interest in the biology and ecology of animals actually decreased after a zoo visit. An attitude of dominion and mastery/control over animals increased in visitors, as did negative attitudes toward animals (avoidance, dislike, or indifference). The study also found that people who were more interested in learning about conservation issues were also more concerned about the ethical treatment of animals—a result suggesting that those most interested in learning about conservation would probably avoid or be uncomfortable with visiting a zoo due to ethical considerations. Finally, far from leaving with higher levels of knowledge about animals and their biology, visitors actually seemed to experience a decrease in their level of knowledge as the result of a visit to the zoo. Keltlet and Dunlap, "Informal learning at the zoo." In a survey of members of the public near Marineland Ontario (both those who had visited the dolphinarium and those who had not), researchers found that only 27 percent thought the facilities provided information about marine mammal conservation and the dolphinarium did little to make visitors aware of conservation of marine mammals. Jiang et al., "Public awareness and marine mammals in captivity."
23 W. V. Donaldson, “Welcome to the conference on informal learning,” in Conference on Informal Learning, edited by P. Chambers (Philadelphia: Philadelphia Zoological Garden, 1987), 3. In a study on children encountering animal exhibits, it was noted that comprehension of how an animal was adapted to and interacted with its or her environment and role in the ecosystem (as portrayed by the animal’s prey or the kind of vegetation eaten) was actually greater when children looked at animal dioramas in museums than when they observed exhibits of living animals at a zoo. Children visiting museums also had a greater understanding of threats to the animals, in particular problems caused by human activities. B. A. Birney, “Children, animals and leisure settings,” Animals and Society 3 (1995): 171–187.

24 This was shown in the Kellert and Dunlap study on how zoo visits changed public attitudes. The researchers noted that “morality values,” i.e., concern about the right and wrong treatment of animals, actually decreased after exposure to captive animals in a zoo. As an example of how the display industry facilitates this desensitization, zoos and aquaria constantly refer to the marine mammals’ pool, enclosure, or cage as a “habitat,” as if such enclosures were natural. For example, a SeaWorld brochure, The Real Story on Killer Whales, states that “SeaWorld is committed to maintaining the largest and most sophisticated marine mammal habitats in the world.” Yet the sterile environment of an orca pool is extremely different from what is truly “the largest and most sophisticated” habitat—the ocean—of both physical and ecological complexity and size. In their study of dolphinarium visitors, Jiang et al. noted that nearly a quarter of the general public who had not visited the facility agreed with the statement: “Animals are not always treated decently/humanely at aquariums or marine parks.” As a result, the researchers concluded, “Some people are aware of problems associated with keeping marine mammals in captivity, and they have strong feelings against the animal capture and display industry.”

Jiang et al., “Public awareness and marine mammals in captivity,” 244.

25 See D. A. Dombrowski, “Bear, zoo, and wilderness: The poverty of social constructionism,” Society and Animals 10 (2002): 195–202. The author states, “Ultimately, zoos are for us rather than for animals: Zoos entertain us, they help to alleviate our guilt regarding what we have done to bears and other wild animals.” 201. People who visited Marineland Ontario, and who considered what they learned as the result of their experience, “were more likely to agree with the notion that humans were created to rule over the rest of nature.” Jiang et al., “Public awareness and marine mammals in captivity,” 245.

26 In their study on education provision by a dolphinarium, Jiang et al. noted that members of the public who did not visit the facility were more aware of the environment than people who did visit the facility. This finding was taken to imply that “higher awareness of environmental issues could be one of the reasons for not visiting a marine park.”


The Conservation Fallacy

A study in Conservation Biology summarized the limitations of captive breeding: “Problems with (1) establishing self-sufficient captive populations, (2) poor success in reintroductions, (3) high costs, (4) domestication, (5) preemption of other recovery techniques, (6) disease outbreaks, and (7) maintaining administrative continuity.” 338. The authors emphasized the need for in situ conservation (in natural habitats) and that captive breeding should be a “last resort in species recovery,” stating that it “should not displace habitat and ecosystem protection nor should it be invoked in the absence of comprehensive efforts to maintain or restore populations in wild habitats.” 338. N. F. R. Snyder et al., “Limitations of captive breeding in endangered species recovery,” Conservation Biology 10 (1996): 338–348.

28 One baiji (called Qiao) was kept in a captive facility in Wuhan, China, from 1980 to his death in 1995. Other river dolphins were captured in the hopes of setting up a captive breeding program, but all of the animals died soon after capture or transfer to the captive facility. The facility was criticized as inappropriate for a serious attempt at rescuing this species; the author of a review of baiji conservation attempts stated “a very substantial facility would be needed to maintain a captive population of baiji, but the Wuhan dolphinarium was not designed for this purpose,” 117. D. Dudgeon, “Last chance to see... Ex situ conservation and the fate of the baiji,” Aquatic Conservation 13 (2003): 105–108.


30 In 2007 the SeaWorld and Busch Gardens Conservation Fund did give a grant worth US$15,000 to fund a project on vaquita distribution in the Gulf of California.


32 The Ocean Park Conservation Foundation, based in Hong Kong, provides funds for research, conservation, and education projects on critically endangered species in Asia, such as the Ganges and Indus river dolphins (Platanista gangetica gangetica and P. g. minor, respectively). The Chinese Academy of Sciences has been working to preserve the critically endangered finless porpoise (Neophocaena phocaenoides), a freshwater porpoise that shares the Yangtze with the baiji but still has a potentially viable population. The Wuhan dolphinarium that held Qiao (see endnote 28) also holds finless porpoises. In contrast to its efforts with baiji, the facility has recently seen the successful birth of a finless porpoise calf. D. Wang et al., “The first Yangtze finless porpoise successfully born in captivity,” Environmental Science and Pollution Research 5 (2005): 247–250. The dolphinarium toured this successful birth (a male) as a major conservation breakthrough, but also noted that “Efforts to preserve the natural habitats within the river are the primary concern.” 248. Five natural reserves have been established along the Yangtze, in which intensive efforts to decrease human-caused mortality are ongoing. In addition, a “semi-natural” reserve (an ox-bow in the Yangtze River) has been set aside for the porpoise (and the baiji, although no baiji were ever found to relocate there) and now holds approximately 30 of the animals, a managed population that produces about two calves a year. Wang et al., “The first Yangtze finless porpoise successfully born in captivity.” These efforts to protect the finless porpoise in its natural river habitat are the real hope for saving this species; the captive breeding attempts in Wuhan’s concrete tanks are no more than good public relations.

33 In a review of attempts to conserve the baiji, the author points out that “if captive-bred individuals cannot be released, then there is little point in taking them from the wild. Before the baiji became ‘living dead,’ it was possible to contribute to the genetic future of populations in nature or in ex situ reserves.” Dudgeon, “Last chance to see...,” 107.

34 A 1999 study showed that aquarium (and zoos) belonging to the AZA, despite recent increases in conservation expenditure, only spent a tenth of one percent of their operating budgets on direct and indirect conservation-related projects. T. Bettinger and H. Quinn, “Conservation funds: How do zoos and aquaria decide which projects to fund?” In Proceedings of the AZA Annual Conference (St. Louis: AZA, 2003), 52–54. In April 2007, the SeaWorld and Busch Gardens Conservation Fund allocated US$1.3 million to conservation projects (not just to marine mammal programs), the highest amount it has given to date. This sounds like a large amount of money until one realizes that this is less than one percent of the revenue generated by SeaWorld Orlando alone. In 2001, SeaWorld Orlando attracted 5.1 million visitors (Information from www.amusementbusiness.com, prior to the website closing down.
in May 2005). When one considers that admission fees range from approximately US$40 for children to US$65 for adults, this comes to more than US$250 million a year from entrance fees alone, without factoring in merchandise and sales of food and drink. SeaWorld San Antonio attendance neared 3 million visitors in 2008 (W. S. Bailey, “SeaWorld GM says the local park is making a big splash,” San Antonio Business Journal, 29 August 2008, http://seattle.bizjournals.com/ sanantonio/stories/2008/09/01/story2.html), with ticket costs ranging from US$38.59 for children to US$48.99 for adults. This would have brought in a further US$200 million or so in ticket sales. Unfortunately more exact incomes are not readily available, nor are visitor numbers from other Anheuser-Busch facilities featuring marine mammals (such as SeaWorld San Diego, Busch Gardens and Discovery Cove), but the conservation expenditures come to less than one percent of the estimated ticket sale revenues of these two facilities. In contrast, it has been stated that if a zoo or aquarium is to make a serious contribution to conservation, at least 10 percent of its operating income should go toward conservation and research. J. D. Kelly, “Effective conservation in the twenty-first century: The need to be more than a zoo,” International Zoo Yearbook 35 (1997): 1–14. For some zoos this is actually the case—for example, Jersey Zoo in the United Kingdom’s Channel Islands dedicates 23 percent of its gross income to conservation, approximately 100 times the relative contribution of SeaWorld. A. Tribe and R. Booth, “Assessing the role of zoos in wildlife conservation,” Human Dimensions of Wildlife 8 (2003): 65–74.

For example, as a result of the 1996 EU Council Directive CE 338/97, “On the protection of species of wild fauna and flora by regulating trade therein,” facilities importing threatened species (including cetaceans) into Europe have to ensure that removals are sustainable and also that the animals will be used “for breeding or propagation purposes from which conservation benefits will accrue to the species concerned” (Art. 8, §(2)(c)) or will be used “for research or education aimed at the preservation or conservation of the species” (Art. 8, §(5)(g)). Portraying a dolphinarium (legitimately or not) as a conservation or captive breeding facility would thus allow imports of animals to and from Europe.

The most frequently displayed marine mammal species in dolphinariums and aquaria are common bottlenose dolphins, California sea lions (Zalophus californianus) and orcas, none of which are, as a species, endangered or threatened (although some populations are).

This is especially a problem in developing nations, such as Caribbean and South Pacific island states. In the 2007 WSPA survey, only 30 percent of respondents believed that capturing dolphins from the wild for public display had negative impacts on wild dolphin populations; the harmful conservation impacts of wild captures are well hidden by the public display industry.

See Reeves et al., Dolphins, Whales, and Porpoises, for a good discussion of this issue.

One dramatic example of a small cetacean hunt occurs in the Faroe Islands (a Danish protectorate), targeting the long-finned pilot whale (Globicephala melas). This species has been hunted by the Faroese for generations (Reeves et al., Dolphins, Whales, and Porpoises), and it is unknown if the population can continue to sustain the loss of hundreds of individuals each year. However, government medical officials in the Faroe Islands recently recommended that islanders stop eating pilot whale meat altogether, as it is now too toxic for safe consumption by humans. D. Mackenzie, “Faroese islanders told to stop eating ‘toxic’ whales,” New Scientist, 28 November 2008, http://www.newscientist.com/article/dn16159-faroese-islanders-told-to-stop-eating-toxic-whales.html. At the time of this edition’s publication, the Faroese whalemen had not altered plans for the hunt as a result of this recommendation.

The U.S. public display industry presented testimony advocating this position through one of its representatives, John Hodges, at the 1992 International Whaling Commission (IWC) meeting in Glasgow, Scotland.

Live Captures


U.S. government scientists measured strong stress reactions in pantropical spotted dolphins (Stenella attenuata), measured by changes in blood chemistry, stress protein levels, and other factors, as the result of being encircled by speed boats and entrapped by purse-seine nets in the eastern tropical Pacific Ocean tuna fishery. In addition, heart lesions were found in dead animals, which the researchers linked to stress. K. A. Forney et al., “Chase encirclement stress studies on dolphins involved in eastern tropical Pacific Ocean purse seine operations during 2001,” Southwest Fisheries Science Center Administrative Report LJG-02-32, La Jolla, California (2002), http://sfsco.noaa.gov/uploadedFiles/Divisions/PRD/Programs/ETP_Cetacean_Assessment/LJG-02-32.pdf. Researchers also found suppressed immune systems, making animals more susceptible to subsequent disease. T. Romano et al., “Investigation of the effects of repeated chase and encirclement on the immune system of spotted dolphins (Stenella attenuata) in the eastern tropical Pacific,” Southwest Fisheries Science Center Administrative Report LJG-02-32C, La Jolla, California (2002), http://sfsco.noaa.gov/uploadedFiles/Divisions/PRD/Programs/ETP_Cetacean_Assessment/LJG-02-32C.pdf.

Reeves et al., Dolphins, Whales, and Porpoises, 17.


This method of hunting various dolphin species has a long and bloody history in Japan and the Faroe Islands. Reeves et al., Dolphins, Whales, and Porpoises; C. S. Vail and D. Risch, Driven by Demand: Dolphin Drive Hunts in Japan and the Involvement of the Aquarium Industry (Chippewa, United Kingdom: WDCS, 2006).

This is the last year for which reliable numbers of animals sold live are available. Vail and Risch, Driven by Demand, 11.

S. Hemmi, Japan’s Dolphin Drive Fisheries: Propped Up by the Aquarium Industry and “Scientific Studies” (Tokyo, Japan: Eba Nature Conservation, 2005). This report contains eye-witness accounts of the brutality of these hunts, as well as detailed information on the quotas, actual numbers killed, and the efforts to which the fishermen go to prevent the public from witnessing the killing.

50 Vaill and Risch, Driven by Demand; The situation in Japan continues to evolve. In 2007, two municipal officials in Taiji spoke out about the levels of mercury found in meat from the dolphin drives, publicly expressing concern for the first time about this long-known contamination problem. D. Adams, “Toxic Japanese school lunches: Assemblymen from Taiji condemn practice and sound warning,” Whales Alive! 16(4) (2008), http://www.whalesalive.org/wa07402.html. While the hunts (and sales to dolphinaria) continue, the cruelty inherent in the hunt, the lack of sustainability, and the evidence of mercury contamination in dolphin meat have led to growing opposition, from the international community, scientists, and even the public display industry itself. See statement opposing acquiring dolphins from drive fisheries by the AMMPA at http://www.ammpa.org/faqs.htm#p11.


52 In 2004, Paul Kenyon described his encounter with Tim Desmond, the American procurer of drive-hunted-captured dolphins for Ocean Adventure. Kenyon wrote that Desmond claimed, “he’s the conservationist” as opposed to “the demonstrators trying to stop the drive-hunts.” Kenyon goes on to say of Desmond: “He argues that Taiji is the most environmentally friendly place to acquire dolphins. If he ordered them from elsewhere—Cuba for instance, which is a major supplier—the dolphins would be caught specifically for him: in other words, he would be guilty of interfering with the species.” P. Kenyon, “Taiji’s brutal dolphin drive hunt begins again,” The Independent, 9 November 2004.

53 In 1993, Marine World Africa USA in Califorina (now Six Flags Discovery Kingdom) and the Indianapolis Zoo in Indiana attempted to import drive-hunted cetaceans from Japan, but animal protection groups discovered their source. When the NMFS was confronted with this fact, it denied the imports—not because the method used was inhumane (a violation of the MMPA), but because it was not the method specified in the capture permits’ conditions (sewinmetting). In other words, the agency denied the import because a technicality in an effort to avoid making a definitive determination that drive fisheries were an inhumane collection method.

54 On 16 July 1998, 17 December 1998, and 14 August 2001, permit application requests to the FWS (FWS-O18137, 944287, 944288, 944289, and 043001) were published in the Federal Register; they were for the capture of wild Alaska sea otters by capture operators working for public display facilities in Japan. Most of these facilities, including Kagoshima City Aquarium, Suma Aqualife Park, In-Mito Sea Paradise Aquarium, and Oarai Aquarium, had participated in drive fisheries. At the time of its application, Oarai Aquarium had actually stated its intention to do so again the following year.

55 See the Federal Register 68 (2003), 58316.

56 WSPA survey.

57 On 29 March 2004, Miranda Stevenson, PhD, the director of the Federation of Zoos, stated that members of the federation are obliged to follow their “Animal Transaction Policy,” which states: “When acquiring animals Federation collections are responsible for ensuring that the source of animals is primarily confined to those bred in captivity and that this is best achieved through zoos to zoo contact.” This sentiment is shared by the World Association of Zoos and Aquariums, in its code of ethics. http://www.waza.org/ethics/index.php?maincat=ethics#ethics. Acquisition of Animals (#6). Also, both associations hold that any animal transactions must be in compliance with national and international laws relating to animal transport, trade, health, and welfare, including CITES, which certainly has not happened in the case of many cetacean live captures.

58 See www.cites.org for treaty text and definitions and for resolutions and other documentation clarifying the requirements for non-detiment findings.

59 Convervonsy on the substance of NDFs erupted when more than two dozen Indo-Pacific bottlenose dolphins (Tursiops aduncus) were exported from Solomon Islands to Mexico in 2003 and again when the same number were exported from Solomon Islands to Dubai, United Arab Emirates, in 2007 (see Appendix I). Information on dolphin populations in these South Pacific waters is lacking, yet the Solomon Islands government issued NDFs for both exports. The IUCN Species Survival Commission Cetacean Specialist Group organized a workshop in August 2008 at the Secretariat of the Pacific Regional Environment Programme (SPREP) to discuss this trade situation and concluded that “there is an urgent need to assess Indo-Pacific bottlenose dolphin populations around any island where human-caused removals or deaths are known to be occurring” and that the state of knowledge for Solomon Islands was insufficient to support the current quota of 100 dolphins a year. See SPREP press release at http://www.sprep.org/ articles/news_detail.asp?id=456.

60 The Action Plan also states:

Removal of live cetaceans from the wild, for captive display and/or research, is equivalent to incidental or deliberate killing, as the animals brought into captivity (or killed during capture operations) are no longer available to help maintain their populations. While unmanaged and undertaken without a rigorous program of research and monitoring, live-capture can become a serious threat to local cetacean populations. All too often, entrepreneurs take advantage of lax (or non-existent) regulations in small island states or less-developed countries, catching animals from populations that are already under pressure from bycatch, habitat degradation, and other factors.

In other words, many countries are “fishing” themselves out of dolphins. Reeves et al., Dolphins, Whales, and Porpoises, 17.


62 Van Waerebeek et al. reviewed any documents that could be found on the population status of bottlenose dolphins in Cuban waters. Only one
paper, from 1954, could be found that was published in a bona fide peer-reviewed journal. The researchers concluded that "the available documentation is insufficient for the international community of marine mammal scientists to assess the sustainability of current capture levels of *Tursiops truncatus* in Cuban waters. Therefore, we strongly recommend the international trade of common bottlenose dolphins from this area ceases until evidence of no detriment can be authenticated." Van Waerebeek et al., "Live-captures of common bottlenose dolphins *Tursiops truncatus* and unassessed bycatch in Cuban waters," *Nature*, 45.


65 On 10 January 2002, Mexico amended Article 60 BIS of the Wildlife Law to prohibit the capture of marine mammals in its territorial waters. In June 2007, the first successful prosecution of this statutory prohibition occurred, when eight dolphins were confiscated from a company that had captured these animals illegally the month before. Six of the dolphins were secured by authorities where they were captured; they were released immediately in the same location. Two dolphins had already been sent to a dolphinarium in Mexico City, but they too were confiscated and it is believed that they were returned to the capture site and also released. Dr. Y. Abínz-Pasini, personal communication, 2007.

66 Reeves et al., *Dolphins, Whales, and Porpoises*, 72.

67 The director of the Dolphin Academy, Laetitia Lindgren-Smits van Oyen, was reportedly fired by shareholders of the facility because "Lindgren had made her opposition to the import of the so-called 'newly caught dolphins' from Cuba known to the government and also the media." Lindgren said after her firing that she would dedicate herself to opposing "this immoral and unnecessary dolphin business." Amigore, "Critical director Dolphin Academy dismissed," www.amigore.com, 24 December 2007 (in Dutch and English).

68 The NMFS called for a voluntary moratorium in 1983 on the capture of bottlenose dolphins in the Gulf of Mexico and along the U.S. Atlantic coast, due to a lack of information about stock structure and poor population estimates in some areas. The last capture from U.S. waters of any cetacean species was in 1982, when three Pacific white-sided dolphins were taken off the coast of California for the John G. Shedd Aquarium in Chicago. The ensuing public outcry was intense, and no captures in U.S. territorial waters have occurred since. However, it should be noted that public display facilities continue to explore the possibility of capturing cetaceans from U.S. waters—it is the potential controversy, not the law, that has held them back to date.

69 See Appendix I for a detailed account of these captures and subsequent events.


71 International Whaling Commission, "Report of the Sub-Committee on Small Cetaceans." The Venezuelan activities, involving "massive irregularities" in CITIS and other permit documentation, are currently being prosecuted by a district level court in the state of Sucre. The owners of the local dolphinarium are on trial as the alleged perpetrators of the offenses (under Article 59 of the Criminal Environmental Act 1992). A. Villarreal (as translated by J. Bolanos), "A Venezuelan court has ordered the start of trial against Waterland Mundo Marino Dolphinarium," *Whales Alive!* 17(4) (2008): 3–4.

72 The lack of scientific data to assess the sustainability of these captures was emphasized by the Small Cetaceans Sub-Committee of the IWC's Scientific Committee. International Whaling Commission, "Report of the Sub-Committee on Small Cetaceans."

73 Black Sea bottlenose dolphins are considered to be a unique sub-species of bottlenose dolphin: *Tursiops truncatus ponticus*. The initial proposal was to have Black Sea bottlenose dolphins moved from CITIS Appendix II to Appendix I, which would have granted stricter controls and prohibitions against the trade in these animals. Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.) Although this proposal failed (the dolphins are still listed under Appendix II), a compromise was successful; the quota for Black Sea bottlenose dolphin exports was reduced to zero.

74 This whale is Lolita, also known as Tokita, a femaleorca currently kept at Miami Seaquarium. Lolita is one of only four captive orcas known to have surpassed 30 years of age and one of only two who are believed to have survived past 40 (she was captured in 1970, when she was estimated to be 4–5 years of age; the other over-40 orca is Corky of SeaWorld San Diego).

75 An analysis by the Center for Whale Research estimated that if the Southern Resident population had not taken place, the number of reproductive-active orcas in the population would be 44 percent greater. These individuals would have given birth to approximately 45 surviving calves. The number of captured animals (all of whom theoretically could have survived to the present day), plus these "potential" calves, suggests that the population has approximately 90 fewer orcas than it might have had without the captures. The population today is approximately 90 whales. S. Jacobs, "Impact of the captures between 1982 and 1978 on the Southern Resident killer whale community" (Friday Harbor, Washington: Center for Whale Research, 2003), http://orcas.washington.edu/impact.htm.

76 The Southern Resident population of orcas was listed as endangered in November 2005. See http://www.wnms.noaa.gov/pr/species/mammals/cetaceans/killerwhale.htm.


78 The animal died of bacterial pneumonia; the scientists who performed the necropsy (animal autopsy) concluded that "the stress situations that the captured orca went through may have compromised its immune status, and, as a consequence, resulted in infection," 323. E. I. Rozanova

The annual quotas for 2001–2008 come from WCCS (the Whale and Dolphin Conservation Society) and the death of the juvenile during the capture operation was reported in Fisher and Reeves, "The global trade in live cetaceans."

In its 2007 review of global orca populations, the Small Cetaceans Subcommittee of the IWC’s Scientific Committee noted that the captures of orcas in Russia had been conducted without any scientific evaluation of the population prior to the captures taking place, and called for a halt to further captures until such an assessment was done. International Whaling Commission, "Report of the Subcommittee on Small Cetaceans," Journal of Cetacean Research and Management 10 (Supplement) (2008): 302–321. More than 120 animals have been identified in the region by researchers, but they have not yet been able to calculate the region’s population size. To produce a population estimate, and to even start to weigh the impact of live captures, will take more research and analysis. For information on orcas in Kamchatka coastal waters, see http://www.russamorca.com/indexeng.htm and http://www.wcws.org/submissions_bin/cftp-so-cnap-00085.pdf, as well as the 2007 review in the IWC Scientific Committee report.

This information was collated from various sources by The HSUS during the public comment period for an import permit application submitted by SeaWorld Orlando for three captive-born male beluga whales from Marineland Ontario. The permit, despite strong opposition, was granted in November 2006. Although inventory records from Marineland are publicly unavailable, of the 12 belugas the facility imported in 1996, it is believed that eight (75 percent) had died by July 2007.


According to the survey, 88 percent of Canadians feel it is not appropriate to keep whales and dolphins in captivity. 58 percent are supportive of laws banning the commercial use of captive whales and dolphins in Canada, and 55.1 percent are supportive of laws prohibiting the importation of live whales and dolphins into Canada. A mere 29.7 percent were in support of the “commercial use” of cetaceans in Canada, and only 31.2 percent were against laws prohibiting the importing of live-caught cetaceans. Mailat & Associates.

Various newspapers and organizations have reported on these transfers in the last decade—see, e.g., www.marinacommunication.org/news/factual/352566563612.htm (Egypt).

**Species Enhancement Programs**


The European Union Zoos Directive (Council Directive 1999/22/EC) states that "Member States shall take measures...to ensure all zoos implement...research from which conservation benefits accrue to the species, and/or Training in relevant conservation skills, and/or the exchange of information relating to species conservation and/or, where appropriate, captive breeding, repopulation or reintroduction of species into the wild."

By 1983, more than 1,500 bottlenose dolphins had been removed from the wild for captive display, research, or military purposes from the coastal waters of Mexico, the Bahamas, and the United States. These captures were conducted without any consideration given to whether these removals were sustainable or harmful to the wild population. S. Leatherwood and R. R. Reeves, "Bottlenose dolphin (Tursiops truncatus) and other toothed cetaceans," in Wild Mammals of North America: Biology, Management, Economics, edited by J. A. Chapman and G. A. Feldhamer (Baltimore: Johns Hopkins University Press, 1983), 389–414. See endnote 72 regarding orcas.


A recent proposal for a captive dolphin-breeding program in Jamaica, used to justify a captive dolphin facility on the island, reveals how little at least some captive breeding programs at marine mammal facilities have to do with conservation. In this proposal, the justification for captive breeding was not to help repopulate dolphin populations in the wild, but rather to provide a source of replacement animals for this and other captive facilities in Jamaica. To do this the facility proposed to import 10 dolphins from Cuba plus capture at least 18 (and possibly as many as 40) animals from Jamaican waters over a three-year time period (2004–2007), from populations for which numbers and other vital stock parameters are unknown. The proposal stated further that any animals bred in this program would not be released back into the wild. "Proposed development of dolphin breeding programme in Jamaica," Dolphin Cove, Jamaica, September 2004.

This was actually alluded to in an article on captive breeding of cetaceans, where it was pointed out that "captive population growth from successful births (recruitment rate) does not equal or exceed the population’s mortality rate." Ames, "Saving some cetaceans may require breeding in captivity," 748.

See E. Hoyt, The Performing Orca: Why the Show Must Stop (Bath, United Kingdom: Whale and Dolphin Conservation Society, 1992), 56–89, for a discussion of this concept.

In a review of 145 reintroduction programs for captive-bred species, only 11 percent achieved any degree of success. B. S. Beck et al., "Reintroduction of captive-born animals," in Captive Conservation: Interactive Management of Wild and Captive Populations, edited by P. J. S. Olby et al. (London: Chapman Hall, 1994), 265–284. Many of the failures are the result of improper behavior of captive animals when reintroduced into the wild, such as an inability to forage, avoid predators, or appropriately interact with wild members of the same, or different, species. Snyder et al., "Limitations of captive breeding in endangered species recovery."

See Dudgeon, "Last chance to see..." which noted "There are good reasons why captive breeding of a dolphinarium is no substitute for ex situ conservation in a reserve...there is no evidence that captive-bred cetaceans can be released to the wild."

Some cetacean researchers have considered dolphins in captive facilities to be definitively not wild, but rather "semi-domesticated"—using a definition of "domesticated" from the seventh edition of Webster's Dictionary: "Adapted to life in intimate association with and to the advantage of man." D. J. St. Aulín et al., "Dolphin hybrid and adrenal hormones: Circulating levels in wild and semi-domesticated Tursiops truncatus, and influence of sex, age, and season," Marine Mammal Science 12 (1986): 1–13. However, "adapted to life" is a vague phrase; domestication actually involves the deliberate selection of desirable...
traits (e.g., docile disposition, smaller or larger size) in breeding stock, to develop descendants that are different in some fundamental way from their wild ancestors. J. Diamond, Guns, Genes, and Steel (New York: W.W. Norton & Company, 1997). However, dolphins and whales are a long way from this stage in any of their captive breeding efforts—they may wish to create a “captivity-adapted” cetacean, but for now, they are still seeking simply to maximize the probability of successful births and working to avoid inbreeding. According to Diamond, it may in fact be impossible to domesticate cetaceans, because the various species share a number of characteristics that have by and large prohibited successful domestication in other taxa, including a diet high on the food chain (they are not herbivores, as are most domesticated animals, and it is energy- and cost-intensive to feed them); a slow growth rate (it takes about a decade for most species to reach social and/or physical maturity—animals that have been successfully domesticated tend to mature in two years or less); and problems with captive breeding (see above). Diamond, Guns, Genes, and Steel.

The ISSUS and WSPA do not necessarily agree that captive-bred dolphins should be considered unfit for release, but recognize that evidence supporting the likelihood of a successful reintroduction to the wild of dolphins bred in captivity is currently lacking. However, we reiterate that there is evidence to support the likelihood of a successful return to the wild of wild-caught dolphins held long-term in captivity.

**Mixed Breeding and Hybrids**

Four bottlenose dolphin and long-beaked common dolphin (Delphinus capensis) hybrids were bred at SeaWorld San Diego, although two of these animals died very soon after birth. One of the surviving hybrids was subsequently mated with a bottlenose dolphin to produce a calf who also died soon after birth. H. R. Zornetzer and D. A. Duffield, “Captive-born bottlenose dolphin x common dolphin (Tursiops truncatus x Delphinus capensis) intergeneric hybrids,” Canadian Journal of Zoology 81 (2003): 1755–1762. Another example of hybrids who have been bred in captivity include a rough-toothed (Steno bredanensis) and bottlenose dolphin hybrid at Sea Life Park, Hawaii (T. P. Dohi et al., “A porpoise hybrid: Tursiops x Steno,” Journal of Mammalogy 55 (1974): 217–221); a pregnancy resulting from a bottlenose dolphin and a long-finned pilot whale (Globicephala macrorhynchus) at SeaWorld San Diego (J. E. Antin and L. H. Cornell, “Globicephalo–Tursiops hybrid,” abstract from Fourth Biennial Conference on the Biology of Marine Mammals (San Francisco: Society for Marine Mammalogy, 1981), 4); and a Risso’s dolphin (Grampus griseus) and bottlenose dolphin hybrids, as well as four bottlenose dolphin and false killer whale (Pseudorca crassidens) hybrids at Enchanted Marineiland, Japan (J. P. Sylvestre and S. Tatsaka, “On the intergeneric hybrids in cetaceans,” Aquatic Mammals 11 (1985): 101–105).

**Captive Cetaceans and Culture**


98 An example of the problems that occur when captive facilities neglect the importance of culture is illustrated by Keiko, the orca made famous by the Free Willy movies. Keiko had been removed from his family group in Iceland at the age of one or two years. He was eventually sold to a facility in Mexico (after spending periods in an Icelandic enclosure and a dolphinarium in Canada), where he had no other orcas for company; his only companions were the occasional bottlenose dolphin. Scientists analyzing Keiko’s calls (his “language”) found them underdeveloped. He also mimicked and incorporated into his vocalizations both bottlenose dolphin calls and strange rhythmic sounds that were believed to be imitations of pool machinery. Consequently, when Keiko was being prepared for release back into the wild, his caretakers understood that not only did he have to be taught how to catch fish, but he would not be able to communicate with wild whales until (and unless) he learned how to “speak orca.” V. L. G. Turner, “The underwater acoustics of the killer whale (Orcinus orca),” Master’s thesis, University of Southampton, United Kingdom/Woods Hole Oceanographic Institution, Massachusetts (1997). Clearly, “Behavioral traits that are learned or culturally transmitted are especially prone to rapid loss in captivity,” Snyder et al., “Limitations of captive breeding in endangered species recovery,” 541.

99 For example, Keto was moved from SeaWorld Orlando to SeaWorld San Diego when less than four years old (and eventually was transferred to SeaWorld San Antonio). Keet, another SeaWorld San Antonio animal, was separated from his mother at only 20 months of age, and Splash (who died in April 2005) was moved from Marineland Ontario to SeaWorld San Diego when only 2.5 years old. See http://orcahome.de/orcastat.htm for additional details.


102 As an example, Kalina, a female orca kept at SeaWorld Orlando, was impregnated at only six years of age. In the wild, female orcas have their first calf between 11 and 16 years of age, with an average first pregnancy at 15 years of age. J. K. B. Ford, “Killer whale, Orcinus orca,” in Encyclopedia of Marine Mammals, edited by W. F. Perrin et al. (San Diego: Academic Press, 2002), 568–569. Apart from lacking cultural knowledge, these females may also suffer physiological damage from the stress placed on their bodies by having a calf so young, similar to that seen in humans.

103 A study by researchers at Harderwijk Marine Mammal Park in the Netherlands mentions the high rate of calf mortality in captive display facilities and how a female dolphin in Harderwijk’s care had successively drowned three calves born in captivity. As a result, a training program was launched to try to train the female not to reject her calf and to accept simulated suckling behavior from a model calf. Despite the training, the next calf who was born to the trained female died 15 days after birth as the result of an infection that the authors’ paper suggests resulted from a wound inflicted by the mother immediately after the calf’s birth. R. A. Kastelein and J. Mosterd, “Improving parental care of a female bottlenose dolphin (Tursiops truncatus) by training,” Aquatic Mammals 21 (1995): 165–169.
The Public Display Industry "Double Standard"

104 For more information on the public display industry's arguments against rehabilitation, see the Frequently Asked Questions section of the AMMPA website, specifically www.ammpa.org/FAQ.htm. The entity references a November 1992 report prepared for the Canadian Minister of Fisheries and Oceans by the Advisory Committee on Marine Mammals, entitled "Capture and Maintenance of Cetaceans in Canada," which concluded that "the release to the wild of cetaceans that have been in captivity for extended periods is inappropriate," iv. This report's conclusion was also referenced by the executive director of the AZA when responding to a request from The HSUS's former president to end the public display of small whales. S. J. Butler, letter to Paul G. Irwin, 25 July 1993.

105 Beck et al., "Reintroduction of captive-born animals."

106 A total of nine dolphins, five of whom had been caught from local waters and kept at Atlantis Marine Park, in Perth, were released. Four of these, including a calf, were captive-bred. Three of the captive-born animals were subsequently recaptured, and one (the calf) is presumed to have died. Y. Gales and K. Waples, "The rehabilitation and release of bottlenose dolphins from Atlantis Marine Park, Western Australia," Aquatic Mammals 19 (1993): 49-59.

107 Two captive-born bottlenose dolphins (Shandy and Pasho), who had been reared in Dolphin Reef Eliat, a facility on the Red Sea, were released on 26 August 2004 in the Black Sea. There were concerns, as it was believed that at least one of the parents of those animals was not a Black Sea dolphin, but rather an animal from a completely different ocean system (and probably a completely different species, Tursiops truncatus). When the animals were released, there were no plans for tracking or tagging to monitor their health, reintroduction, or survival. One of the released animals (Pasho) was believed to be pregnant at the time of the release. For Dolphin Reef's brief description of the release, see http://www.dolphinreef.co.il/Default.aspx?tabid=63.

108 In a 1995 compilation of cetacean releases into the wild, 58 bottlenose dolphins and 20 killer whales are mentioned, although most of these were accidental releases or escapes. There are only 15 reports that involve animals who had been in long-term captivity, the majority of whom (12) were bottlenose dolphins. K. C. Balcomb III, Cetacean Releases (Fridley Harbor, Washington: Center for Whale Research, 1995). In 1997, the HSUS, through its international arm Humane Society International, worked with a local dolphinarium owner near Cartagena, Colombia, to release Dano (a young male) and Kika (an older female), two tucundu dolphins (Stenella gutturoa) he had captured about eight years previously. After five months of rehabilitation, the two dolphins were released together in Ceípul Bay on 15 June 1997, but Dano was found dead, entangled in a gill net, only 11 days later. Kika was never re-sighted. The tragic ending of this release effort highlights the risk involved in both bringing dolphins into captivity and attempting to return them to the wild. Great care is needed to ensure the safety of any animals involved in such an effort. N. A. Rose, "Dolphin release is bitter sweet," HSUS News 42 (1997): 29-30.

109 As the result of a project funded by WSPA, Flipper, a bottlenose dolphin who had been captured in Brazil in 1981, was released in Brazilian waters in 1993. The release seems to have been successful, as Flipper was regularly sighted for several years after his release and was seen in the company of other dolphins. M. M. Rolio, "The last captive dolphin in Brazil: A project of rehabilitation, releasing, and monitoring in the natural environment," abstract from Tenth Biannual Conference on the Biology of Marine Mammals (Galveston, Texas: Society for Marine Mammalogy, 1994), 92.

110 The first of these animals was a Florida bottlenose dolphin named Rocky, who was held in captivity for 20 years and was last captive cetacean held at Morecambe Marineand in England. After extensive public demonstrations against cetacean captivity and a resulting drop in park attendance, the facility sold Rocky to the UK-based charity Zoo Check, which subsequently paid for his transport and rehabilitation in a Caribbean facility (in the Turks and Caicos Islands). This release was followed, as the result of public pressure and campaigns, by the release of two more dolphins, from the Brighton Aquarium (Missie, a bottlenose dolphin from Texas held in captivity for 22 years, and Silver, possibly an Indo-Pacific bottlenose dolphin from Taiwan, held in captivity for 15 years). V. McKenna, Into the Blue (San Francisco: Harper, 1992). However, it should be stressed that the two T. truncatus dolphins released in the Caribbean were not native to that region, and Silver was from a completely different ocean system. Moreover, he may have been from a species not found in the Atlantic Ocean (T. aduncus), although this species was not officially recognized until several years after the release.

111 Gales and Waples, "The rehabilitation and release of bottlenose dolphins from Atlantis Marine Park, Western Australia."

112 In June 2001, two bottlenose dolphins (Arilo and Turbo) were being held in a small pool in the mountains of Guatemala. When questions were raised regarding the animals' origins and the lack of proper permits, the dolphins' trainer abandoned the animals, taking their food and the pool's filtration system. When WSPA rescue specialists arrived, the dolphins were malnourished and stressed. Once stabilized, the animals were moved to a rehabilitation pen off the Guatemalan coast, not far from what was believed to be their home range, and were released several weeks later. Local fishermen reported sighting both dolphins in area waters for some time after their release. wwww.uspseusa.org/pages/549/549_04_01_turbo_enjoys_his_freedom_cm.

113 In Nicaragua in 2002, two dolphins (Bluefield and Nica) captured from local waters for eventual use in a private exhibit had been confined in a small freshwater swimming pool for three months when animal protection investigators found them. The Ministry of Environment took immediate custody of the animals and called in WSPA experts to aid the fulfilling dolphins. They rebonded after only a few weeks of rehabilitation and were released into their home range, with help from the Nicaraguan military. No reports of sightings were made, so their fate is unknown. www.uspseusa.org/pages/747_dolphinsDisplayed_in_their_natural_ocean_home_cm.

114 In June 1987, two Mississippi bottlenose dolphins (Joe and Rosie), who had been kept at a research facility, were released in Georgia. The dolphins had been in the research facility for four years before being transferred to Florida and spent the last two years before their release at a swim-with-the-dolphins (SWTD) facility in the Florida Keys. The animals were seen several times in the months immediately after their release. www.tims.com/tims/archives/press/01/1987/95s236.00.html. Two bottlenose dolphins (Echo and Misha) who had been held in captivity for two years were released in Tampa Bay, Florida, on 6 October 1990. Prior to release, the animals were kept in a sea pen and retrained to eat live fish for three and a half weeks. They were only released after they had demonstrated the ability to catch live fish on their own. The dolphins were observed apparently healthy several years after release, and observers demonstrated normal interactions and reintroduction with wild dolphins. This was the first detailed and systematic rehabilitation and monitoring study of its kind and serves as a model for subsequent release efforts. R. S. Wells et al., "Experimental return to the wild of two bottlenose dolphins," Marine Mammal Science 14 (1998): 51-71.

115 After the release of the film, Keiko's fame resulted in a powerful public campaign to return him to the wild. A collaborative effort among animal protection groups, the filmmakers, a private benefactor, consumers-
cial and non-profit sponsors, and scientists resulted in Keiko’s repatriation to Iceland in September 1998. He lived for some months in a specially built sea pen, where he underwent extensive rehabilitation and was fitted with a radio-satellite tag on his dorsal fin. He began supervised forays into the open ocean in May 2000. These “walks,” during which he followed a research vessel, continued each summer for three years. For several weeks each season, he interacted at a low level with the local orca pods who came to the area to feed. In July 2002, Keiko, after several weeks of interaction with the local wild whales, began a five-week unsupervised journey across the Atlantic, monitored the entire distance by satellite telemetry. He arrived in Norway in September 2002 in good health but clearly having failed to re-integrate into a wild pod. His caretakers moved their operation to Norway, where he lived unattended but supervised for more than a year. Keiko died suddenly, probably from pneumonia, in December 2003. K. Brower, *Free Willy: The Journey of a Killer Whale from Free Willy to the Wild* (New York: Gotham Books, 2003).

### 2.2.2.4.2.2.12
See, for example, S. J. Butler, letter to Paul G. Irwin, 23 July 1998, in which he states “[AZA] members would never subject the animals, under their care, to such risky and ill-considered [release] experiments.”

### Ethics and Captive Breeding


### Stranding Programs

The seal rescue operations of the Sea Life Centre franchise are known as seal life or seal sanctuaries, see http://www.sealcentre.co.uk.

A good example of this was the rehabilitation and release of JJ, a gray whale, in 1998 by SeaWorld San Diego. This effort was extremely expensive, yet the release was technically unsuccessful—it did not succeed in setting tags within two days of release into the ocean and was never seen again (and she could easily have died from starvation or been killed by predators soon after). ususx@xs4all.nl, *Gray Whales: News Updates*. Yet the entire process was presented as a huge success in the media and on SeaWorld’s website, and as completely justified on conservation and scientific grounds, even though the science gained from her time in captivity was minimal, at least as suggested by the small number of subsequent publications. This is in sharp contrast to the industry’s response to Keiko’s release. M. Hutchins, “Keiko takes his final journey—across the Atlantic Ocean and back to Iceland,” *Conservation* (Silver Spring, Maryland: American Zoo and Aquarium Association, February 2004), 54–55. The industry portrayed it as a total failure, even though Keiko spent five healthy years in a semi-independent state in Iceland and was tracked for five weeks with complete success by satellite while he crossed the Atlantic to Norway. M. Simon and F. Ugarte, “Diving and Ranging Behavior of Keiko During July–September 2002,” report to The Humane Society of the United States (2003). M. Simon et al., “From captivity to the wild and back: An attempt to release Keiko the killer whale.” *Marine Mammal Science*, doi:10.1111/j.1748-7692.2005.00028.x (2003).

### 2.2.2.4.2.2.13
A dramatic variation on this scenario occurs when a facility claims it is rescuing animals from certain death by bringing them into captivity: an example is the group of orphaned walruses acquired from the native hunts in Alaska. These so-called rescue efforts may in fact act as incentives to hunt hunters to kill walrus mothers and thus create orphans, as money is exchanged to acquire these animals. The Cincinnati Zoo acquired three walrus orphans in 1990. When one of them died in 1998, the *Cincinnati City Boat* newspaper conducted an investigation that revealed that the zoo paid a substantial sum of money to the native hunters. One hunter admitted to the reporter that the hunters went out specifically to acquire the walrus calves for the zoo and returned immediately after obtaining them (the mothers were killed and eaten). The calves were not in fact “surplus” to the subsistence hunt; they were the objectives. N. Fox, "Reforming rescue," *Cincinnati City Boat*, 8–14 October 1998. Apparently in the same year the zoo acquired these walruses, the FWS began making it a permit condition that no money be exchanged when acquiring walrus orphans for public display. R. R. Reeves and J. Mead, “Marine mammals in captivity,” in *Conservation and Management of Marine Mammals*, edited by J. R. Twiss, Jr. and R. R. Reeves (Washington DC: Smithsonian Press, 1999), 412–436.

### 2.2.2.4.2.2.14
An attempt to acquire a stranded orca for public display occurred in April 2007. A calf believed to be no more than a few days old was found stranded on a beach in Mexico. It was never determined how she was separated from her mother. Named Pascuala or Pascualita, she was taken to a local dolphinarium, which voiced concern from the outset that the enclosure (designed for bottlenose dolphins) was unsuitable for an orca and that the staff was not trained in orca care. However, others pointed out that moving her any distance would have caused her considerable stress and probably hastened her death. Nevertheless, an American dolphinarium sought to acquire her, despite the fact that cetacean exports have been illegal in Mexico since 2006. Her deteriorating condition, the plan to transfer her, and the conflict with the law caused considerable controversy, but before it could be resolved, Pascualita died in June 2007. Mary Blom, Mexico’s environmental authorities and animal protection advocates who opposed the transfer, but her survival, regardless of treatment, was always unlikely, without a mother’s care in the crucial first months. The public display industry, rather than face this tragic reality and make her welfare its first priority, instead pursued a plan whose first priority was to add a new female orca to the captive gene pool. A Reuters article from May 2007 describes some of the details of this situation: http://www.reuters.com/article/2007/05/20/us-mexico-cetacean-idUSTO21S717035.

### 2.2.2.4.2.2.15
Again, a more dramatic variation on this theme is when an animal is forced to stand, by facility staff or local fishermen, to provide an exhibit animal to a dolphinarium. An orca in Argentina, named Khashemken, seems to have been a victim of such a forced standing in 1992, when he was a call. Argentina prohibits live captures of marine mammals—but it heavily seems a coincidence that almost all the animals in the collection of Mundo Marino, a dolphinarium on the Argentine coast, are “unreleasable” stranded animals, including Khashemken. His standing report suggests he was not injured and was at worst mildly sunburned, but he was not refloated along with the adult orcas with whom he was reportedly found (they swam away). Instead, he was
brought to Mundo Marino for rehabilitation. By the time he was pronounced healthy in 1993, he was considered to have been held too long for a successful release. Gabriella Bellia, personal communication, 2001.

Research


126 In the wild, dominance hierarchies, segregation of the sexes, and other social behavior do much to affect the breeding of marine mammals. The artificial groupings, small enclosures, and husbandry practices experienced by captive cetaceans may lead to animals breeding at younger ages and at shorter intervals than those typical of wild animals. The constant and abundant food supply may also lead to faster maturation than occurs in the wild. Using data gathered from captive animals to estimate reproductive rates of wild populations would therefore give an incorrect estimate. If these data were used to calculate how quickly a population would recover from depletion, or to address some other similar conservation issue, the answer would also be incorrect and could compound the conservation problem. For a discussion of this issue, see Mayer, A Review of the Scientific Justifications for Maintaining Cetaceans in Captivity.

127 Despite these improvements, it should be noted that capture and release of wild dolphins is a stressful experience, as the situation in the tuna fishery in the Eastern Tropical Pacific has long attested. In this fishery, dolphins are encircled with large nets to capture the tuna swimming underneath and then released. Decades of this treatment have led to stress-related physiological damage and other negative effects. Forney et al., "Chase encirclement stress studies on dolphins involved in eastern tropical Pacific Ocean purse seine operations during 2001." Even carefully conducted capture-and-release of wild dolphins for research purposes (including health assessments) can result in stress responses (L. Mancia et al., "A transcriptomic analysis of the stress induced by capture-release health assessment studies in wild dolphins (Tursiops truncatus)," Molecular Biology 17 (2008): 258-1-2585; Stott et al., "Immunologic evaluation of short-term capture-associated stress in free-ranging bottlenose dolphins (Tursiops truncatus) in Sarasota Bay"). So this is not necessarily a benign research methodology. This latter study clarifies that capture (and release of unsuitable animals) for public display will cause stress, which may be a contributing factor in post-capture mortalities. Indeed, long-term accommodation to captivity and frequent handling does not eliminate this stress response. A study with captive dolphins concluded that whenever a small cetacean is handled (in this case, removed from the water for husbandry/medical procedures, versus training the animals to submit voluntarily to such procedures in-water), significant stress responses occur, even over the course of several years. G. Desportes et al., "Decrease stress; train your animal: The effect of handling methods on cortisol levels in harbour porpoises (Phocoena phocoena) under human care," Aquatic Mammals 33 (2007): 286-282. See Chapter 7 ("Stress") and Chapter 9 ("Mortality and Birth Rates") for additional discussion of stress in captivity and the lack of habitation in cetaceans to transport and removal from the water over time.


129 SeaWorld has recently been publicizing its artificial insemination program for orcas, saying that the techniques used would be invaluable to help conservation of endangered species, a highly dubious claim to say the least. See T. R. Robeck et al., "Reproductive physiology and development of artificial insemination technology in killer whales (Orcinus orca)," Biology of Reproduction 71 (2000): 650-660. For one thing, what works for an orca is not necessarily appropriate for other species. For another, there may be behavioral or physiological issues that invalidate the technique. To illustrate, beluga whales kept in captivity had very poor reproductive success for many years, until it was discovered that keeping the belugas in groups with multiple males was necessary to promote conception, as physiological changes in competing males led to higher sperm counts and fertility and possibly induced ovulation in females. If this is also the case for an endangered species such as the vaquita, artificial insemination techniques would probably be unsuccessful. SeaWorld facilities and other dolphinaria should be trying to save endangered species in situ, by, among other actions, contributing to the protection of habitat. For a discussion of how inappropriate such captive-based reproductive research could be for wild and endangered marine mammals, see Mayer, A Review of the Scientific Justifications for Maintaining Cetaceans in Captivity.

130 In the orca artificial insemination study, for example, three females were successfully impregnated in two years, but one of the females died while pregnant, together with her 123-day-old fetus—harmlessly a glowing advertisement for the technique. Robeck et al., "Reproductive physiology and development of artificial insemination technology in killer whales (Orcinus orca)." The SeaWorld paper also states that 26 orcas have been born in captivity, lauding this as a success. However, this is a significant misrepresentation of the facts; there have actually been at least 66 known pregnancies, but most litters miscarried, were stillborn, or died soon after birth (with one newborn calf dying soon after the paper was accepted for publication). Therefore, at least 81 percent of captive orca pregnancies have been unsuccessful, due to the death of the calf before or just after birth.

131 As examples, when studies on the hearing abilities of captive beluga whales were used to calculate the distance at which the whales could detect shipping traffic, a distance of 20 kilometers was estimated. However, observations of wild animals showed that beluga whales were detecting vessels at distances of well more than 80 kilometers and were actively avoiding shipping at distances up to three times farther than the captive studies would have estimated. This clearly demonstrates that at least some studies on captive animals are not directly applicable to wild cetaceans. K. J. Findley et al., "Reactions of belugas, Delphinapterus leucas, and narwhals, Monodon monoceros, to ice-breaking ships in the Canadian high Arctic," Canadian Journal of Fisheries and Aquatic Sciences 194 (1996): 95-117. In another study, researchers noted that captive bottlenose dolphins do not show the same variability in whistles as wild animals show and may have abnormal whistle patterns, potentially resulting in incorrect conclusions about natural acoustic behavior. S. L. Watwood et al., "Whistle sharing in paired male bottlenose dolphins, Tursiops truncatus; Behavioral Ecology and Sociobiology 15 (2004): 531-543. As a non-aquatic example, captive animals swim at speeds that are not comparable to those exhibited in the wild. J. J. Rohr et al., "Maximum swim speeds of captive and free-ranging delphinids: Critical analysis of extraordinary performance," Marine Mammal Science 18 (2002): 1-19.

Studies using the hearing abilities of captive animals to predict the behavior of wild animals are a particular problem. Data from such studies have been used to develop guidelines for sound levels considered to be safe for cetaceans. But as noted above, animals in the wild have been observed reacting to sound hundreds or even thousands of times quieter than predicted by captive animal studies. Findley et al., "Reactions of belugas, Delphinapterus leucas, and narwhals, Monodon monoceros, to ice-breaking ships in the Canadian high Arctic;" see also J. C. Gould and P. J. Fish, "Broadband spectra of seismic survey airgun emissions, with reference to dolphin auditory thresholds," Journal of the Acoustical Society of America 105 (1999): 2177-2184. Part of the problem may be that captive dolphins are continuously exposed to high levels of background noise, which may lead to hearing loss. V. V. Popov et al., "Audiogram variability in normal bottlenose dolphins (Tursiops truncatus)," Aquatic Mammals 33 (2007): 24-33; S. H. Ridgway and
D. A. Catterall, "Hearing deficits measured in some Tursiops truncatus, and discovery of a deafblind dolphin," *Journal of the Acoustical Society of America* 101 (1997): 590–590, or simply habituation to higher levels of noise. These and other factors lead to a situation where noise exposure standards based only or primarily on captive animal studies might be inappropriate for wild populations.

Researchers studying the behavior of captive river dolphins noted among other issues that “Within the captive environment, pool size, shape and structure are considered to be important in influencing the behavior of these dolphins,” 39. R. Liu et al., "Comparative studies on the behaviour of *Inia geoffrensis* and *Lipotes vexillifer* in artificial environments," *Aquatic Mammals* 20 (1994): 39–45.


Of 571 abstracts for (wholly or partially) cetacean-related studies submitted to the Seventeenth Biennial Conference on the Biology of Marine Mammals (Cape Town, South Africa: Society for Marine Mammalogy, 2007), 11 reported on studies of cetaceans kept in naval or private research facilities (1.9 percent), with only 18 (3.2 percent) reporting on studies of cetaceans held at dolphinaria or aquaria. The majority of the cetacean research done with public display animals was conducted by facilities outside North America. For pinipied-related studies (264 abstracts), a greater percentage (7.3 percent) was conducted on captive animals, although more than a quarter of these studies used specimens held in a U.S. government-subsidized research facility (the Alaska Sea Life Center). Only 3.2 percent of the pinipied-related studies were conducted in dolphinaria, aquaria, or zoos.

As an example, see Wells et al., "Experimental return to the wild of two bottlenose dolphins.”

CHAPTER 2: THE PHYSICAL AND SOCIAL ENVIRONMENT

In 2005, a special edition of the journal *Aquatic Mammals* was published, featuring the results of a decade-long project by Laurence Coupaul, a dolphin researcher with a degree in architectural design who has specialized in examining the design of dolphinaria and aquaria and the husbandry of captive dolphins. She conducted a survey of facilities around the world, in an effort to identify the best and the worst of dolphinarium design. Coupaul was a proponent of public display, yet she recognized that many facilities fall short of ensuring dolphin welfare. She noted the priority in enclosure design: "The display of animals in a theatre setting allowed the oceanarium to accommodate large crowds and present shows. Until very recently, this remained the only type of display, with small additional features for husbandry and training purposes; it is still the dominant presentation type for shows around the world." Coupaul, "A survey of the environments of cetaceans in human care: Introduction," 269.


In November 2004, dolphins kept in a sea pen in Antigua by the Mexican company Dolphin Discovery were threatened by sewage and contaminated water from a nearby salt lagoon. A local newspaper reported that the facility was illegally blocking the lagoon’s drainage to address this threat, an action that resulted in the flooding of houses and businesses bordering the lagoon. After considerable delay and apparent disregard for orders issued by the Antiguan Government to unblock the drainage, the company was finally forced to close the facility and evacuate the dolphins (to avoid exposure to the flood waters) to a sister facility in Tortola. *Daily Observer*, Antigua, 29 November 2004.

As noted in Appendix 1, in September 2003, dolphins kept in a sea pen facility in La Paz, Mexico, were hit by a hurricane. The pen became filled with debris and contaminants. Three dolphins died within days of the storm and by late October, a fourth animal had died from a storm-induced condition. L. Diebel, "Trapped in an underwater hell, Mexico pressed to free dolphins," *Toronto Star*, 12 October 2003 (see www.canon.info/eco/ed31012/ed31012.html for a reprint of this article); Y. Alaniz P. and L. Rojas O., *Definirios* (Mexico City: AGT Editor, S.A. and COMARINO, 2007), 204–205.

Hurricane Omar hit the island of St. Kitts in October 2008. A new captive facility there, Marine World, which held four sea lions and four fur seals, was seriously damaged and all eight pinnipeds escaped. One fur seal was immediately recaptured, but the rest were still at large more than a week later, sighted as far away as St. Thomas, U.S. Virgin Islands. These species are not native to the region and if not recaptured could die or introduce non-native pathogens to the local wildlife. M. Poinset, "Sea lions spotted near Water Island," *The Virgin Islands Daily News*, 28 October 2008.

In 1966, Anthony’s Key Resort, in Roatán, Honduras, was hit by a hurricane-level storm. At least eight bottlenose dolphins, imported from Florida by the Institute for Marine Studies (a S.W.I.T.C.H facility), escaped as a result of the barrier around their pen collapsing in the storm. All were captive-born or had been captured in Florida waters for Ocean World dolphinarium in Port Lauderdale, which went bankrupt and closed in 1994, sending all of its dolphins to Anthony’s Key, Seven
of these animals were never recovered—given their complete lack of familiarity with the area, it is unlikely they survived. Associated Press, 19 January 1996.

143 The Marine Life Oceanarium in Gulfport, Mississippi, held 17 dolphins in its various enclosures. Days before Katrina hit, the staff moved nine of these animals to inland hotel swimming pools. This is a common contingency plan for coastal facilities, particularly for sea pen enclosures, yet hotel pools are comparatively very small and must hold several dolphins for days or even weeks at a time. In some cases, regular table salt is added to the swimming pool water and the amount of chlorine used is typically very high, as swimming pool filtration systems cannot cope with dolphin waste. The Marine Life dolphins were held in these pools for several days before being moved to a dolphinarium in Florida.

Eight other dolphins were left in the largest tank in the complex, one with 50-foot high walls, which had weathered Hurricane Camille in 1969. While the inland hotel pools holding the evacuated dolphins were not damaged by the hurricane, Katrina completely destroyed Marine Life Oceanarium and the eight dolphins left behind were carried out to sea by a storm surge estimated to have been 40 feet high. In the next three weeks, all were recovered, although several were injured and ill from swimming in coastal waters heavily contaminated by hurricane debris and runoff. Subsequently all 17 dolphins were transferred to the Atlantis Hotel in Nassau, Bahamas, where they are now held in a SWTU facility. For the official U.S. government version of the rescue, see http://www.norcutt.nws.gov/3um/2510.htm. A large number of federal and state government agencies were involved in this rescue, conducted almost entirely with taxpayer dollars. This news story also does not address the inadequacy of a hurricane contingency plan that put half of the facility's dolphins in heavily chlorinated, artificially saltized hotel swimming pools, left half in a tank on the path of a Category 5 hurricane, and did not set aside funds for any rescues that might be required.

In addition to the dolphins, 19 sea lions and one seal were left behind at the facility, secured in a building that was thought to be safe. Afterwards, some of the sea lions were recovered from as far as 20 miles away. At least five died during the storm or from storm-related injuries, including at least one who was shot by a police officer. The seal was never found. SeaWorld Orlando provided temporary housing for the survivors until the animals were sent to a facility in the Bahamas (Dolphin Encounters in Blue Lagoon) in 2006. T. Gardner, “Rescued sea lions thrive at Dolphin Encounters in the Bahamas,” Los Angeles Times, 9 September 2006, http://travel.latimes.com/articles/la-fse-seaions14-2006sp14.

144 Alainz and Rojas. Delinarios, 206-210. For at least two of the sea pen facilities in this area, Hurricane Wilma completely wiped out all the features above the water line.

145 Soon after the 2004 tsunami, the IUCN's chief scientist noted, "The mangroves were all along the coasts where there are shallow waters. They offered protection against things like tsunamis. Over the last 20-30 years they were cleared by people who didn't have the long-term knowledge of why these mangroves should have been saved, by outsiders who get concessions from the governments and set up shrimp or prawn farms." http://www.earthtide.com/site/news/newsdetail.asp?id=936. To guard their coasts from further tsunami damage, many countries bordering the Indian Ocean have embarked on extensive mangrove restoration and replanting projects. http://www.neuseewek.com/10/148502.


Pinnipeds and Other Non-Cetaceans


150 In the United States, the regulatory standards for captive marine mammal enclosures, which set the minimum requirements for such things as chlorination and the use of freshwater or saltwater, are established by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, Animal and Plant Health Inspection Service, "Subchapter A-Animal Welfare" and "Subpart E-Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals," in Code of Federal Regulations, Title 9, Chapter 1, Part 3 (Washington, DC: U.S. Government Printing Office, 2005), 93-110, http://www.aphis.usda.gov/animal_welfare/tau_shml. APHIS announced its intentions to revise its regulatory standards in 1993, an implicit acknowledgment that the standards were outdated. Several sections were revised and published in 2001, but key sections remain unchanged. The public display industry actively endorses APHIS as the regulatory agency in charge of captive standards, which was demonstrated during the reauthorization of the MPA in 1994. At that time an effort was made by animal protection organizations to shift regulatory authority to the NMFS, but the industry defeated this effort. The display industry continues to lobby to keep enclosure size and water quality standards at their current outdated levels, which indicates that economic factors rather than animal well-being are the industry’s first priority.


152 King, Seals of the World; Riedman, The Pinnipeds.

153 For general background information on the polar bear’s natural history and excellent photographs of wild polar bears, see D. Gurschick and D. Matthews, Polar Bears (San Francisco: Chronicle Books, 1985).
Stereotyped are generally negative behaviors that manifest in captive animals whose movements or natural behavioral expressions are restricted. They include pacing, swaying, and self-mutilation and are often found in large species in captivity, such as elephants, polar bears, orcas, and big cats.


In a report on Canada's polar bear export program, the animal protection organization Zoocheck Canada made no assessment of various polar bear captive facilities around the world. The report noted several areas of concern, including: (1) Undersized enclosures (e.g., enclosures of only a few hundred square meters housing one or more polar bears); (2) absence of soft substrates (polar bears used to walking on snow frequently are housed in enclosures with concrete floors); (3) lack of environmental enrichment (enclosures were often completely barren with few objects with which polar bears could interact to reduce their boredom or keep active); (4) inadequate and/or contaminated swimming pools (polar bears are natural swimmers and pools also help the bears regulate their body temperature); and (5) abnormal stereotypical behaviors (pacing, head nodding, and self-mutilation are common behaviors that are indicative of stress and poor welfare). R. Laidlaw, Canada's Forgotten Polar Bears: An Examination of Manitoba's Polar Bear Export Program (Toronto: Zoocheck Canada, 1997).

In an article discussing a controversy about inappropriate captivity practices for elephants, the conservation and science director of the AAZA, in mentioning the new polar bear enclosure at the Detroit Zoo, noted that polar bears traveled extensively in the wild and would never experience summertime temperatures found in Detroit: "Using [the Detroit Zoo's] logic...polar bears really shouldn't be in Detroit, either." M. Kaufman, "Seeking a home that fits Elephant's case highlights limits of zoo," The Washington Post, 21 September 2004.

As an example, in May 2001, despite strong opposition by animal protection groups, the FWS granted a permit for the Mexico-based Suarez Brothers Circus to import seven polar bears into Puerto Rico. Temperatures reached as high as 112°F/44°C, yet the bear enclosures often lacked air conditioning and pools of cold water. This species is highly adapted to life in a polar environment and has many anatomical and physiological specializations to retain heat. Forcing the bears to exert themselves and perform tricks in tropical heat was physically harmful, and the bears suffered from a variety of skin and other health problems. After considerable controversy and legal protests from animal protection groups and others, the FWS seized one bear in March 2002, citing falsified CITES documents, and she was sent to the Baltimore Zoo. The agency confiscated the remaining six bears in November 2002, citing violations of the MMPA and the circus's public display permit as the reasons for the seizure. Unfortunately, one of the animals, a bear called Royal, died on route to a zoo in Atlanta. The other five bears survived and were sent to zoos in Michigan, Washington, and North Carolina.

In the 1997 Zoocheck report on this trade (Laidlaw, Canada's Forgotten Polar Bears), the Manitoba Wildlife Branch claimed to thoroughly investigate target facilities before bears were exported. However, when Zoocheck ordered copies of this documentation through the Freedom of Information Act, it only received eight pages of brief notes from two facilities. The Wildlife Branch also maintained that all facilities to which the bears were sent must meet the standards of the Canadian Association of Zoological Parks and Aquaria (CAZPA) and Canadian Agriculture. The Zoocheck report pointed out that this was meaningless, as CAZPA guidelines made no mention of polar bear husbandry and Canadian Agriculture standards did not actually exist.

Laidlaw, Canada's Forgotten Polar Bears. The Manitoba Wildlife Branch was also supposed to have a six-month "check-up" on traded bears, but this did not take place. Moreover, frequently bears were retrained and documentation was lost. As an example, three polar bears exported to the Ruhr zoo in Germany were retrained to the Suarez Brothers Circus in Mexico.

R. Laidlaw, "Zoocheck Canada's response to the polar bear facility standards advisory committee draft recommendations" (Toronto: Zoocheck Canada, 1998).

See http://web2.gov.mb.ca/faun/statutes/czam/p064e.php.


The manatee exhibit at SeaWorld Orlando apparently does not use chemicals to maintain water clarity or sanitation; therefore, sea grasses and a variety of fish are maintained in the enclosure. The number of manatees in the exhibit varies; all are acquired through rescues, and most are in the process of being rehabilitated for eventual release (N. Rose, personal observation).

After the 1989 Exxon Valdez oil spill in Alaska, 347 oiled sea otters were captured and treated in rehabilitation centers. Of those treated, 33 percent died, with 81 percent of those doing so within 10 days of capture. It was noted by veterinarians dealing with these animals that some of these deaths may have occurred as a result of being confined and handled in rehabilitation centers. H. Rebar et al., "Clinical and laboratory correlates in sea otters dying unexpectedly in rehabilitation centers following the Exxon Valdez oil spill," Veterinary Pathology 32 (1995): 346–350. In a sea otter translocation program conducted in California between 1987 and 1996, 147 healthy sea otters were captured and transported from the coast to San Nicholas Island. Of these animals, eight died during the translocation process, and six were later found dead—three shortly after the release, and the other three later. The fate of 61 of these released otters was unknown. Thus nearly 10 percent of the otters were known to have died during or soon after the translocation, almost certainly from the effects of handling (as they were healthy otherwise), although the mortality rate may have been even higher. C. Benz, "Evaluating attempts to reintroduce sea otters along the California coastline," Endangered Species Update 13 (1996): 31–35.

The annual mortality rate of adult sea otters held in captivity between 1965 and 1996 was about 10 percent, with that of pups more than 70 percent. At least 18 sea otter pups have been born at SeaWorld San Diego—all have died before reaching sexual maturity. E. J. Branham and J. Haufler, "Sea otters in captivity: The need for coordinated management as a conservation strategy," Endangered Species Update 13 (1996): 61–67. By taking in orphaned California sea otters, facilities add those that are considered non-releasable to their captive collections, thus replenishing their numbers. Zoos and aquaria have apparently adopted an active strategy to retain orphaned sea otter pups or to select "rescued" animals that can sustain collections through captive breeding. This transforms a project to help conserve the California
sea otter into a rather cynical method of easily obtaining new otters for a dwindling captive population. See endnote 169 for another rescue program that does seek to return orphaned pups to the wild and endnote 250 for other sea otter mortality statistics.

168 On 16 July 1998, a request for the capture of 24 sea otters in Alaska was published in the Federal Register 63 (1998), 38418. The permit applications stated that six of the captured otters would then be chosen and transported to Japanese aquaria and dolphinariums. The justification for this capture was a lack of breeding success of sea otters in Japanese facilities. For this planned capture, after a maximum acclimation period of three days, the otters were to be taken on a 22-hour journey to Japan. It should be noted that for other marine mammals the acclimation period (during which mortality is higher) is approximately 45 days. Small and DeMaster, "Acclimation to captivity." Three of the animals were destined for the Ishikawa Zoo, which had acquired sea otters through another capture in Alaska in 1986. By 1994, half of these otters had died—by 1998, the rest were dead also (sea otters can live up to 20 years in captivity).

169 The southern sea otter population is listed as threatened under the U.S. Endangered Species Act. At the Monterey Bay Aquarium, the sea otter exhibit holds rescued animals from this population that are either non-releasable or are in the process of rehabilitation. Orphaned sea otter pups were once raised by human caretakers and returned to the wild, often to die soon after. These pups are now placed in a "surrogate" program, where adult female otters adopt the orphans and care for them, specifically to minimize the influence of human intervention on the pup's behavioral development. This has resulted in higher survival rates following release back into the wild. T. E. Nicholson et al., "Effects of rearing methods on survival of released free-ranging juvenile southern sea otters," Biological Conservation 138 (2007): 313–320.

Small Cetaceans


171 Most government standards for the maintenance of these animals, where standards exist, are minimal and, particularly regarding tank size, wholly inadequate. Further, they are not specific with regard to species (for instance, species that are from tropical and temperate climates may be housed together). For a typical example, see Animal and Plant Health Inspection Service, Code of Federal Regulations.


174 Many animal welfare agencies consider that if an animal cannot perform or satisfy "behavioral needs" then "the individual's welfare may be compromised," 151. T. Friend, "Recognising behavioural needs," Applied Animal Behaviour Science 22 (1989): 151–158. A paper on behavioral needs of captive marine mammals includes among these the need to mate, forage, capture prey, or patrol an area. A. Goldblatt, "Behavioral needs of captive marine mammals," Aquatic Mammals 19 (1993): 149–157. The paper goes on to say that exaggerated play behavior by marine mammals with items in their pool, maddened behaviors (such as sexual behavior directed toward trainers and other species), play behavior with other (non-cetacean) species in their tanks, and high levels of stereotypical behavior are all attributable to a lack of behavioral stimulation, or boredom. The paper concludes that marine mammals need to receive behavioral stimulation and to have some control over their environment, or they will "show signs of stress such as exaggerated stereotyped behaviour." Goldblatt, "Behavioral needs of captive marine mammals," 154.


176 The HSUS was an appointed member of the negotiated rule-making panel to revise the Animal and Plant Health Inspection Service, Code of Federal Regulations.

177 In apparent contrast to Basson and Wells, "Effect of pool features on the behavior of two bottlenose dolphins," the Indianapolis Zoo sponsored a study that suggested that because dolphins spent more time in two side pools that were smaller and shallower than the main display/show pool, large pool sizes were not necessary for bottlenose dolphin welfare. However, the dolphins did not have free access to all areas of the enclosure complex at all times, and there were different observers, leading to high inter-observer variability. In addition, the study did not consider that the dolphins might be avoiding the main pool area (perhaps due to high levels of noise associated with the main pool) or seeking shelter in the small side pools—the surveys were only conducted in the evening, and the dolphins may have retreated to side pool areas to rest. M. R. Shyam et al., "Effects of pool size on free-choice selections by Atlantic bottlenose dolphins at one zoo facility," Journal of Applied Animal Welfare Science 5 (2002): 215–225. In comparison, Basson and Wells had a more standardized methodology and, as the facility was not open to the public and the dolphins did not have to perform shows, their study was not compromised by these confounding factors.

178 For an introduction to the natural history of the northeast Pacific populations of orcas, see Ford et al., Killer Whales.

179 In their 2007 study, Clark and Mason concluded that stereotypies and high infant mortality in certain zoo carnivores was more a result of their ranging behavior than of their foraging behavior; that is, less a result of their carnivory and hunting activities than of their tendency in the wild to have large territories and cover large areas routinely. For example, cat species with small territories in nature do better in zoos than cat species with large territories—both species are from the same taxonomic family and both are predatory carnivores, but the wide-ranging species "needs" to roam, even though it is fed regularly in captivity, and suffers when it is not allowed to do so (see also earlier discussion of polar bears). Clark and Mason, "Natural behavioral biology as a risk factor in carnivore welfare."


181 For a discussion of captive orca social structure and breeding husbandry, see Hoy, The Performing Orca, in particular, 56–58. For a discussion of the captive breeding of bottlenose dolphins, see Leatherwood and Reeves, eds., The Bottlenose Dolphin. In particular, see the chapter...
CHAPTER 3: HUSBANDRY AND HEALTH CARE

For information regarding the nutritional value of the food provided to captive marine mammals and the need for nutritional supplements, see Hoyt, The Performing Orca, 42–43; Geraci, “Husbandry,” 769–764; Couqui, “A survey of the environments of cetaceans in human care: Food and fish house,” 364–370.


For information on the use of temporary holding areas, see Hoyt, The Performing Orca, 31–36. One example of this practice involved Finna, the male orca at the Vancouver Public Aquarium in Canada. He was sequestered in a medical side pool in early March 1955 during the days preceding the labor of his mate, Bjossa, to allow the mother and calf "privacy" in the main display tank. The calf died minutes after birth, but the body was not removed from the tank for five days; Finna remained in the side pool throughout this period. Another example involving sea lions occurred at the Aquarium of the Pacific in Long Beach, California in the summer of 2006. A female and her pup were held in a "behind-the-scenes" nursery enclosure, which did not have a permanent pool typically required for pinnipeds. The animals were periodically given water baths and checked hourly. Between one check and the next, both animals died from heat exhaustion—a common occurrence. Some external factors may have caused hyperthermia in the two, without a permanent pool of water to help with temperature regulation. There is little evidence that this prolonged "temporary" maintenance in holding areas that do not otherwise meet primary enclosure standards has been curtailed in any country, despite the example set by the U.S. regulatory revision.

Two incidents at Sea Life Park, a dolphinarium on the island of Oahu, Hawaii, illustrate this risk. In the first incident, five dolphins were left stranded for an unspecified length of time in May 1991 when a drain in their tank was left open without supervision. One animal died several days later of pneumonia, apparently exacerbated by this stressful event. In the second incident, three sea lions were left stranded for two hours in October 1992 while their tank was being cleaned. One sea lion died immediately from heat exhaustion. E. C. Lyons, Government Inspection Report, prepared for the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 21 January 1994.

An analysis from 1985 clearly demonstrates the negative effects of this stress. Small and DeMaster, "Acclimation to captivity." The paper indicates that mortality rates for bottlenose dolphins increase six-fold over the captive norm directly after capture or transport—every successive transport causes the same spike in mortality risk, meaning dolphins never grow accustomed to the transport process. It takes a month before their mortality rates return to normal. See also endnote 127 and Desportes et al., "Decrease stress; train your animals," which presents direct evidence of the stress experienced by captive cetaceans every time they are removed from the water, even after years of handling.

CHAPTER 4: HUMAN-DOLPHIN INTERACTIONS

Dolphin-Assisted Therapy

For example, see papers published by Dolphin Human Therapy, http://www.dolphinhumantherapy.com/Research/MainResearch.htm.


There is no overall regulatory body policing dolphin-assisted therapy (DAT) facilities, so there is no oversight of the qualifications, certifications, or degrees of the staff at these facilities. P. Brakes and C. Williamson, *Dolphin Assisted Therapy: Can You Put Your Faith in DAT?* (Chippenden, United Kingdom: WDCC, 2007).


**Swim-with-the-Dolphins Attractions**

See endnote 205 for a history of the U.S. SWTD regulations, ending in the suspension of their enforcement.

As noted earlier, this authority is shared with the FWS. The NMFS has authority over seals, sea lions, whales, dolphins, and porpoises. The FWS has authority over polar bears, sea otters, walruses, manatees, and dugongs.


Another scientific examination of SWTD attractions concluded that SWTD interactions are dangerous to humans and dolphins and recommended against the expansion of such facilities and the capture of dolphins from the wild to stock them. T. G. Frohoff, "Behavior of captive bottlenose dolphins (Tursiops truncatus) and humans during controlled in-water interactions," Master’s thesis, Texas A&M University (1993). For a review article that examines SWTD attractions, see T. G. Frohoff and J. M. Puckett, "Human interactions with free-ranging and captive bottlenose dolphins," *Anthrozoos* 3 (1990): 44–53.

Control was defined as supervision by trainers who direct the type of interactions that occur between dolphins and swimmers.

A behavioral study on captive common dolphins (*Delphinus delphis*) in a SWTD attraction at Marineland Napier, in New Zealand, found that the dolphins increased their use of the refuge area (an area where human swimmers were not permitted to enter) when swimmers were in the water with them. During periods without swimmers, there was no difference in the amount of time the dolphins spent in the refuge area and the main enclosure area. The study also noted that many interanimal social behaviors decreased with the presence of humans, but the rate of animals touching each other with flippers, and some other behaviors (e.g., synchronous swimming) increased, as did the number of surfacings. Despite this evidence of a significant impact on dolphin behavior from the presence of swimmers, the study’s authors inexplicably dismissed these observations, stating that SWTD interactions did not have any negative effect on the dolphins. D. J. Kyngdon et al., "Behavioral responses of captive common dolphins *Delphinus delphis* to a 'Swim-with-Dolphin' programme," *Applied Animal Behaviour Science* 81 (2003): 163–170. Marineland Napier’s last dolphin died in September 2008 and the facility was closed soon after. As of December 2008, the facility, which was New Zealand’s only dolphinarium, re-opened on a limited basis (no formal shows) through April 2009. New attractions were to be evaluated during this period (see http://www.marineland.co.nz/index.php).

We are aware of only one study published in a peer-reviewed journal that systematically examined whether participation in SWTD sessions led to negative behavioral change in dolphins. Although the authors concluded that participation did not lead to such changes and was therefore not detrimental to the dolphins, they emphasized the context—the study, which took place at a dolphinarium in Mississippi, had a very small sample size (three dolphins) and the dolphins only participated in one session per day. The authors recommended that the results of this study should be "accepted with caution" and "should only be generalized to situations where dolphins participate in a single Dolphin Interaction Program each day," 364. M. Trone et al., "Does participation in dolphin human interaction programs affect bottlenose dolphin behavior?" *Applied Animal Behaviour Science* 83 (2005): 355–374. This latter situation is not typical of SWTD attractions in high-traffic areas such as Florida or the Caribbean, where dolphins are more often used in three to five sessions a day. We are aware of only one study (presented at a veterinary conference and published in its proceedings) that examined whether dolphins experienced physiological impacts from participating in SWTD sessions. This study measured stress hormone levels and concluded that there was no difference in these levels between dolphins used in SWTD encounters and those in performance-only exhibits. However, the described methodology did not clarify the sampling regime—it was not clear when the animals were sampled ([directly after a swim session or after some time had passed, for example]), how often they were used in swim sessions, and so on. Additionally, the study was apparently never submitted for publication in a peer-reviewed journal. J. C. Sweeney et al., "Circulating levels of cortisol and aldosterone in *Tursiops truncatus*: A comparative look at display animals and animals in SWTD programs," paper presented at the 33rd Annual Conference of the International Association for Aquatic Medicine, Tampa, Florida, 2001.

Researchers surveyed people who had participated in SWTD interactions within the past 2 to 36 months and asked them how they felt about the education offered at the facilities they visited. The respondents replied that they could not remember many of the details of the interpretation, they did not consider it to be very factual, and some viewed the material to be "1342" (142) while the animals were being prepared for the interactive session. S. Curtin and K. Wilkes, "Swimming with captive dolphins: Current debates and postexperience dissonance," *International Journal of Tourism Research* 9 (2007): 131–146.

On 23 January 1995, APHIS published proposed specific regulations for SWTD interactions in the *Federal Register* 60 (1995), 4983. After more than three years, APHIS published final regulations on 4 September 1998, *Federal Register* 63 (1998), 47129. The regulations included requirements for refuge areas, swimmer-to-dolphin ratios, swimmer-to-staff ratios, staff training, maximum interaction times, and provisions for addressing unsatisfactory, undesirable, or unsafe behavior—all measures to promote the welfare of the animals. Almost immediately, on 14 October 1998, APHIS exempted "working programs" from these regulations until further notice, as there was confusion as to whether standards for space and attendant supervision meant for swimming sessions should apply also to sessions where participants remain essentially stationary and non-buoyant. *Federal Register* 63 (1998), 55912. On 2 March 1999, a small article was published in the...
improvements were noted at the petting pool facilities, but many problems still remained.

211 In comparison, the regulations for SWTW programs called for each dolphin to be exposed to public interaction for no more than two hours a day. In addition, the regulations stipulated that dolphins must have unrestricted access to a refuge area to which they could retreat to avoid human contact. One of the U.S. petting pool attractions currently has no refuge area at all, and at two others the area is often closed off during public hours—denying dolphins escape from unwanted attention during the noisiest periods. At SeaWorld Orlando the refuge area has a window, through which the public tries various methods to get the dolphins' attention, such as by banging on the glass. See WDCS and The HSUS, Biting the Hand that Feeds: The Case Against Dolphin Petting Pools (Washington, DC: 2003), www.hsus.org/aux-files/PDF/Biting_The_Hand_That_Feeds.pdf.

212 Under the Animal and Plant Health Inspection Service, Code of Federal Regulations, giving of food to marine mammals by members of the public can only be done under the supervision of a licensed employee who must ensure that the correct type and amount of food is given, which, in turn, can only be supplied by the captive facility. Furthermore, under these regulations food for captive cetaceans should be prepared and handled “so as to minimize bacterial or chemical contamination and to assure the wholesomeness and nutritive value of the food.” Animal and Plant Health Inspection Service, Code of Federal Regulations, section 3.105.

213 WDCS and The HSUS, Biting the Hand that Feeds.

214 In addition to these foreign objects, dolphins were also fed fish that had been broken up, exposing bones with which dolphins could be injured when swallowing, or fish that were contaminated—for example, fish that had been dropped on the ground and then stepped on.


216 Disease transmission is obviously not the only risk posed to people at petting pools. Dolphins may also bite and strike at people with their snouts, causing bruising and skin breaks, risking infection. A petting pool dolphin grabbed a young boy’s arm with his mouth in Orlando, Florida, in 2006, breaking it but not breaking the skin. http://blogs.orlandosentinel.com/business_tourism aviation/2006/08/dolphin_grots.h.html.

CHAPTER 5: RISKS TO HUMAN HEALTH

Diseases

217 Of this group of respondents, 64 percent stated that their skin lesions occurred after physical contact with a marine mammal, and 32 percent noted that their infections were associated with marine mammal bites. When specific diseases were reported, these included pororoxus and herpesvirus infections, and bacterial dermatitis (caused by Staphylococcus aureus, Mycobacterium marinum, or Pseudomonas spp.). Ten percent of respondents noted the contraption of so-called “seal finger,” an infection caused by Mycoplasma spp. or Erysipelothrix rhusiopathiae. In one case this infection was so severe as to be considered "life threatening," ultimately requiring amputation of the infected fin. This particular infection occurred as the result of exposure to a marine mammal carcass, and not a captive display animal, although it should be noted that several instances of "seal finger" infections have arisen from bites given to captive marine mammal workers. J. A. K. Mantel et al., Assessment of the Risk of Zoonotic Disease Trans-
mission to Marine Mammal Workers and the Public: Survey of Occupational Risks, Final report—Research Agreement Number K00354884 (Davis Wildlife Health Center, University of California, 2004). This report was subsequently reviewed and published in a peer-reviewed journal (T. D. Hunt et al., "Health risks for marine mammal workers," Diseases of Aquatic Organisms 81 (2008): 81-92), in which the authors noted that “During certain recreational activities, the public may also be at risk of transmitting diseases to and contracting diseases from marine mammals,” 82. They specifically referred to SWTDO activities.

218 Long-term (more than five years) or frequent (more than 50 days a year) exposure to marine mammals, or being engaged in activities related to cleaning or repairing enclosures, were all statistically likely to increase the risk of infection. Mazet et al., Assessment of the risk of zoonotic disease transmission to marine mammal workers and the public.

219 Eighteen percent of survey respondents reported respiratory illnesses contracted while working with marine mammals, although only 20 percent of those believed that the disease was the result of marine mammal contact. Six percent also noted long-term malaise (with symptoms similar to those found with chronic fatigue syndrome or multiple sclerosis) that a third attributed to marine mammal contact. Workers exposed to marine mammals more than 50 days per year were three times more likely to contract a respiratory infection. Mazet et al., Assessment of the risk of zoonotic disease transmission to marine mammal workers and the public.

220 Marine mammals can play host to a number of pathogens that pose risks to humans. A study of bottlenose dolphins off Florida, Texas, and North Carolina found 1,871 bacteria and yeast strains and 65 different species of microorganisms in fecal and blowhole samples, several of which were of potential pathogenic significance to humans. J. D. Buck et al., "Aerobic microorganisms associated with breathing bottlenose dolphins in coastal Gulf of Mexico and Atlantic ocean waters," Journal of Wildlife Diseases 42 (2006): 356-344. Black Sea bottlenose dolphins carry antibodies (meaning they have been exposed to the associated pathogens) to morbilliviruses, Toxoplasma, and Brucella. [Website—not found]. There have been several incidents of humans being infected by marine mammal strains of Brucella, a bacterium that can cause symptoms ranging from fatigue and depression to joint pain, fever, spontaneous abortion in pregnant females, inflammation of the glands in male and female adults. For cases of human infection with seal and dolphin strains of the Brucella bacterium, see S. D. Brew et al., "Human exposure to Brucella recovered from a sea mammal," Veterinary Record 144 (1999): 483; A. Sohn et al., "Human neurobrucellosis with intracerebral granuloma caused by a marine mammal Brucella spp.,” Emerging Infectious Diseases 9 (2003): 485-486; W. L. MacDonald et al., "Characterization of a Brucella sp. strain as a marine-mammal type despite isolation from a patient with spinal osteomyelitis in New Zealand," Journal of Clinical Microbiology 44 (2006): 4363-4370. The Center for Food Security and Public Health at Iowa State University warns that “Marine mammal Brucella can infect humans…groups at risk may include…people who work in marine mammal rehabilitation or display centers, as well as anyone who accompanies a beached animal or concurs on a beach.” Center for Food Security and Public Health, "Brucellosis in Marine Mammals" (2007), http://www.cfsph.iastate.edu/Factsheets/ pdfs/brucellosis_marine.pdf.


221 Several cases are noted in the report by Mazet et al., where physicians were unable to diagnose long-term and recurrent infections. Some physicians refused even to acknowledge that there was a possible risk of infection, with one doctor quoted as saying that there were “no diseases that could be transmitted from whales to humans—so don’t worry about it.” Mazet et al., Assessment of the risk of zoonotic disease transmission to marine mammal workers and the public, 15.

222 Indo-Pacific bottlenose dolphins captured in Solomon Islands (see Appendix 1 for details) were found to have been exposed to both Brucella (M. Tachibana et al., "Antibodies to Brucella spp. in Pacific bottlenose dolphins from the Solomon Islands," Journal of Wildlife Diseases 42 (2006): 412-414) and Toxoplasma (Y. Omata et al., "Antibodies against Toxoplasma gondii in the Pacific bottlenose dolphin (Tursiops aduncus) from the Solomon Islands," Journal of Parasitology 91 (2005): 965-967), the causative agents of brucellosis and toxoplasmosis, respectively. Brucella is a pathogen transmissible to humans (see footnote 220). Toxoplasmosis is potentially fatal to marine mammals (G. Migliioli et al., "Fatal disseminated toxoplasmosis in a spinner dolphin (Stenella longirostris)," Veterinary Parasitology 27 (1987): 463-464) and if contracted by pregnant women can result in abortion or congenital defects in the fetus. In children and adults, there are other symptoms and it is sometimes fatal. J. P. Dubey, "Toxoplasma gondii," In Waterborne Pathogens (Denver: American Water Works Association, 2006): 239-241. Solomon Islands dolphins have been exposed to Mexico, Dubai and the Philippines to SWTDO facilities (see Appendix 1 for more details). This illustrates the potential for disease transmission to humans inherent in SWTDO attractions, particularly since pathogens such as Brucella can be released into the water of pools and sea pens via an animal’s contaminated feces. Center for Food Security and Public Health, "Brucellosis in Marine Mammals."
about the welfare of the dolphins and the safety of tourists (see video and details in Dutch about the incident at \textit{http://www. paripipoalidieren.nl/neo/neo/1446} and also the English language version of the magazine Amigoc, 7 January 2008, \textit{http://www.amigoc.com/english}).

226 WDCS and The HSUS, \textit{Biting the Hard That Feeds}.


228 Bottlenose dolphins have been reported killing at least five dolphin calves in the Moray Firth, Scotland, and have killed at least nine calves in a two-year period in the coastal waters of Virginia, in the United States. I. A. P. Paterson et al., "Evidence for infanticide in bottlenose dolphins: An explanation for violent interactions with harbour porpoises?" \textit{Proceedings of the Royal Society of London, Biological Sciences} 265 (1998): 1167-1170; D. G. Dunn et al., "Evidence for infanticide in bottlenose dolphins of the western North Atlantic," \textit{Journal of Wildlife Diseases} 38 (2002): 505-510. Calves have been killed in captivity as well—for example, in September 2001, a four-month-old female bottlenose dolphin calf was repeatedly attacked by two adult male dolphins at the National Aquarium in Baltimore while her mother was performing—the calf, also suffering from pneumonia, died soon after. A. B. Swingle, "Fish stories," \textit{Dorni} 55 (2004), \textit{www.hopkinsmedicine.org/dome/0410/neighborsnips2.htm}.

229 "Killer whales" historically got their name from having been observed killing other marine mammals, namely baleen whales. Observations in Monterey Bay, California, have noted that orcas in this area attack and kill at least seven species of marine mammals, including pin-nipeds and cetaceans. There is also evidence of attacks (i.e., scarring and injuries) on two species of baleen whale in the bay, although such attacks have not been directed observed. R. L. Terullo and N. A. Black, "Predation behavior of transient killer whales in Monterey Bay, California," abstract from \textit{Fifteenth Biennial Conference on the Biology of Marine Mammals} (Greensboro, North Carolina: Society for Marine Mammalogy, 2003), 161.

230 Fifty-two percent of respondents reported marine-mammal-inflicted injuries, with 88 percent of injuries on the hands, feet, arms, or legs; eight percent on the torso or abdomen; and four percent on the face. More than a third of the injuries were severe (90 cases)—either a deep wound, with some requiring stitches, or a fracture. Statistically, those in regular contact—more than 50 days a year—with enclosed marine mammals were several times more likely to suffer a traumatic injury. Mazet et al., \textit{Assessment of the risk of zoonotic disease transmission to marine mammal workers and the public}.

231 While bottlenose dolphins have been observed attacking and even killing conspecific calves, orcas have never been seen violent attacking conspecifics in the wild (aggressive interactions have never been seen to escalate to injury)—only other marine mammal species.


236 See \textit{www.abc.net.au/news/newsitems/200407/s1153433.htm} for a description of this incident.

237 The trainer received a broken foot as a result of this incident. See \textit{http://www.nsoft.com/misc/id/1964936} for a description.

238 See \textit{http://www.smh.com.au/news/whale-watch/korean-sunsine-killer-whale-cried/2007/10/09/111965897426.html} for a description of this incident. At least 19 other captive orca attacks or accidents in dolphinaria have been recorded (for a list, which spans the early 1970s to 1999, see \textit{http://www.angelfire.com/quiet/orcas/attack.html}).

239 The initial narrative summary on the November 2006 incident with Kazuki and Ken Peters, which included extensive background details on the history of keeping orcas in captivity and previous incidents involving trainer injuries, was written by an investigator with California's Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) after extensive interviews with Peters and other SeaWorld trainers (Cal/OSHA form 170A, narrative summary inspection number 307053774, no date). The content of this initial summary was based on those interviews. The information memorandum was intended to address "potential hazards" to employees and to offer recommended solutions (Cal/OSHA form 1, Information memorandum, report number 307053774, 28 February 2007). These recommendations included: 1) improving control over the orcas by reducing environmental stressors (the summary narrative included a description of such possible stressors, including a performance schedule that was overly demanding); 2) increasing the number of orcas in the captive population, to reduce the need for the trainers to rely on one or two animals for the majority of performances (this suggests that distributing SeaWorld's 20 or so orcas over three locations is not in the best interests of the animals, although it maximizes the parent company's profits); and 3) reconsidering the possibility that lethal force against "out of control" orcas might be necessary to protect trainers. All of these recommendations belled SeaWorld's self-characterization of its management practices as always in the best interests of the animals and of the in-water interactions between trainers and orcas as absolutely safe.

SeaWorld strongly objected to the information memorandum—which is only supposed to be issued when an actual violation of safety standards has been identified (whether or not an employee has been exposed to it)—and insisted that the majority of the narrative summary's contents were beyond the expertise of the investigator and should be deleted (this, despite the narrative summary being based on interviews with SeaWorld's own trainers). Three days after the memorandum was officially filed, a press release from Cal/OSHA (dated 2 March 2007) announced that the memorandum was being withdrawn, as SeaWorld was in full compliance with safety codes, and that the agency regretted "the difficulties it may have caused SeaWorld, its staff, and its patrons." The narrative summary of the incident was retained, but substantially redacted to omit any language that suggested or otherwise contributed to an implication or impression that doing in-water work with orcas was high-risk. The final version was dated 4 April 2007.

Subsequent communication between an HSUS representative (N. Rose) and a Cal/OSHA employee indicated that the withdrawal was the result of unprecedented pressure from SeaWorld executives on the agency. The executives strenuously objected to any suggestion that current practices at SeaWorld were insufficient
to protect the trainers from injury or ensure the well-being of the animals. The Cal/OSHA employee had never known the agency to redraft a narrative summary before (and deemed it an odd gesture, as the original summary would still exist as an official agency document, alongside the revised version).

HSUS requested and received copies of the original and redrafted summaries from Cal/OSHA. A side-by-side comparison of the two versions showed that the changes were primarily deletions, with very few additions or revisions. More than half of the original document was simply redacted. The missing text included any language suggesting that orcas are inherently dangerous and unpredictable; that they have individual differences in personality that make careful evaluation of their “mood” on a daily and even hourly basis essential for trainer safety (Indeed, a full but simple description of the seven individual orcas at SeaWorld San Diego was omitted completely), that trainers believe stressors in the captive environment exist and contribute to an unavoidable risk of the animals going “off behavior”; and that, in the end, trainers “have no tools at their disposal to punish an orca that is misbehaving. There is little that they can do to punish an animal of this size anyway.”

Cal/OSHA original narrative summary, 7. All descriptions of previous “off behavior” incidents at SeaWorld and other facilities (both injurious and non-injurious), have for two previous incidents with Kasatka and one incident two weeks earlier involving another whale at SeaWorld San Diego that resulted in a minor injury, were deleted.

In essence, the original narrative summary made it clear that “the trainers at SeaWorld recognize this risk [of injury and death through in-water interactions] and train not for if an attack will happen but when.” Cal/OSHA original narrative summary, 17. It concluded that in-water interactions were inherently risky and incidents such as the one between Kasatka and Peters could and should be anticipated and the routine safety precautions in place at SeaWorld were not only essential but could easily be augmented. The final version implied the opposite, leaving the reader with the impression that in-water interactions were inherently safe, that “off behavior accidents” and attacks were completely aberrant, and that the routine safety precautions taken by trainers were good practice but almost never needed.

240 A disturbing trend is the expansion of in-water interactions to other species, including larger cetaceans such as beluga whales (see http://www.dolphintrust.org/eng/indexeng.html and K. Walker, “SeaWorld says you can swim with the whales,” NSB, 14 November 2000) and pinnipeds such as California sea lions (see http://www.canada.com/topics/news/national/story.htm?id=61c351eb-3536-4310-55af-2d7d58b642b2e). Sea lions are a particularly risky species for tourists to swim with, as their bites are dangerous (see endnote 217); a report on animal-inflicted injuries at the Denver Zoo indicated that its sea lions are more problematic than any other species, biting workers seven times in 2004 and 2005 (T. Hartman, “City's zokeeper hurt 45 times in past 5 years,” Rocky Mountain News, 12 April 2007).

241 While elephant rides are conducted, they occur under the strict direct control of a caretaker armed with an elephant hook—and these rides are considered by many to be highly risky and unsafe, as well as inhumane and unethical.

CHAPTER 6: BEHAVIOR

242 This point is emphasized in Clubb and Mason, “Captivity effects on wide-ranging carnivores,” and “Natural behavioural biology as a risk factor in carnivore welfare.”


245 The extreme example of this was the fatal 1989 interaction between Kandu V and Corky II at SeaWorld San Diego. Kandu had a dependent calf at the time, and Corky had shown interest in the calf—Kandu had apparently repulsed her interest previously. In a show of dominance, her final, excessively violent attack on Corky, which led to her own death, was fatal precisely because it occurred in restricted space, where tensions were exacerbated, and neither whale had an escape route.

CHAPTER 7: STRESS

246 For examples and discussion of how stress can affect the health of marine mammals, see L. A. Dierard, “Stress in marine mammals,” in CRC Handbook of Marine Mammal Medicine, edited by Dierard, 295–301; Fair and Becker, “Review of stress in marine mammals.”


249 The following quotation from a study on oysters illustrates the connection between stress and capture/transport in mammals: “The capture, handling, transport, and confinement inherent to [the translocation of wild mammals] inflict a substantial amount of anxiety and fear on animals, particularly when freeliving wild semi-wild individuals who have had little previous exposure to humans are to be translocated. Being pursued, caught, and physically manipulated constitute stressful events for these animals.” J. Fernandez-Mordul et al., “Stress in wild-captured Eurasian otters (Lutra lutra): Effects of a long-acting neuroleptic and time in captivity,” Animal Welfare 13 (2004): 143.

250 An excellent 1999 review of the literature on stress in dolphins caused by chase and handling, by the NMFS’ Southwest Fisheries Science Center, is available at http://nmdc.nos.noaa.gov/publications/TFW/SW/PDF/ NOAA-TM-NMFS-SWESC-362.PDF. This review concludes that the chase and capture (handling) of dolphins can have significant negative impacts on individuals.
A recent study describes one possible mechanism for the increased mortality risk faced by dolphins after a transport. Blood chemistry of animals transported between facilities indicates that dolphins find routine handling and transport stressful, even after living in captivity for several years. As a result, their various cell functions appear impaired, which would lead to a depression of their immune response. In such animals, "immunological uncertainty following transportation would enhance the potential risk of infectious diseases in susceptible individuals," 352. K. Noda et al., "Relationship between transportation stress and polymononuclear cell functions of bottlenose dolphins, Tursiops truncatus," Journal of Veterinary Medical Science 69 (2007): 379-383. In short, because transport is stressful—to the dolphins, it is never routine—they face an increased risk of infection, illness, and death every time they are moved from one place to another, at least for a short time until they adjust to the new location. The four dolphins used in this study had been held in a dolphinarium for over five years and were transported 250 kilometers from one facility to another (a distance routinely traversed by many dolphins in the United States and elsewhere for husbandry and captive management purposes), using routine transportation methods.


Enclosures should be as large as feasible and should be designed to allow individuals to at least, be out of the sight of others and not be trapped in corners. This can be achieved by a series of connecting pools or a single large enclosure containing barriers." Waples and Gailes, "Evaluating and minimizing social stress in the care of captive bottlenose dolphins," 22. The researchers also suggested that captive facilities have behavior experts on hand to identify possible social and group problems in dolphins as soon as possible. They called for monitoring of dolphin behavior to "be as standard as water testing in maintaining the health and well-being of captive marine mammals" and stated that "it is imperative when dealing with captive social animals to attempt to maintain a group structure that resembles that found in the wild." Waples and Gailes, "Evaluating and minimizing social stress in the care of captive bottlenose dolphins," 23.

Gurnah and Matthews, Polar Bears.

CHAPTER 8: CETACEAN INTELLIGENCE


This is called the encephalization quotient, or EQ. Most animals would be expected to have an EQ of 1. However, dolphins have a much larger brain than would be expected for their size, with EQs ranging from 3.21 to 4.56. In comparison humans have an estimated EQ of 7.0, and the human ancestor Homo antecessor had an EQ of 4.4. H. J. Jeanson, Evolution of the Brain and Intelligence (New York: Academic Press, 1975).


An analogy might be to look at an obese person compared to a normal weight person—the obese person would have a much lower EQ than the other, but this does not mean overweight people are less intelligent.

M. C. Caldwell et al., "Review of the signature whistle hypothesis for the Atlantic bottlenose dolphin," in The Bottlenose Dolphins, edited by Leatherwood and Reeves, 199-234.


The facility where this study was conducted, Kewalo Basin Marine Mammal Laboratory (KBML) in Honolulu, Hawaii, had a controversial 30-year history, as the two dolphins (two more were added to the study later) were held in small, concrete tanks in a hurricane-prone area. One of the authors of this document (N. Rose) worked at KBML for a semester in 1982. Eventually, the four dolphins died (one in 2000,
another in 2003, and the last two in 2004) and the laboratory was closed (it was entirely demolished in 2006).


275 Jaakkola et al., "Understanding of the concept of numerically 'less' by bottlenose dolphins (*Tursiops truncatus*).

276 For example, studies have indicated that members of the Pirahã tribe in the Amazon, which has a relatively simple language, have difficulty coping with numbers beyond two; it has been suggested that this apparent difficulty is due to the lack of complexity in their language. C. Holden, "Life without numbers in the Amazon," *Science* 305 (2004): 1093.


280 What makes the mirror studies even more remarkable is that vision is not the primary sense of dolphins—hearing is. Their ability to use mirrors is like a person being able to recognize his or her own voice on a recording (which many people cannot do). In addition, dolphins do not normally encounter reflective surfaces at all—that is, they have no natural familiarity with seeing two-dimensional images of the world, as do terrestrial mammals whenever they look at the surface of a calm body of water.


282 Resnik lists these factors as (1) the ability to feel pain; (2) consciousness; (3) the ability to grasp concepts or form beliefs; (4) the ability to form abstract concepts or self-concepts; (5) reasoning; (6) language use; (7) the ability to experience moral emotions such as sympathy, love, and guilt; and (8) the ability to understand and follow moral rules. Resnik, *The Ethics of Science*. Bottlenose dolphins clearly can feel pain and have consciousness. Arguably they can reason (figure things out) and show emotion. Many studies have noted cetaceans attending and supporting dead companions or calves, long after the animals have died, and sometimes for a period of several days. For example, see D. Fertl and A. Schiro, "Carrying of dead calves by free-ranging Texas bottlenose dolphins (*Tursiops truncatus*)," *Aquatic Mammals* 20 (1994): 53–56. This is interpreted by several scientists as a sign of grief. The mirror-recognition and signature whistle studies strongly suggest that bottlenose dolphins understand the concept of self and abstract concepts and may have linguistic ability. Only the last factor—the ability to understand and follow moral rules—is still a complete unknown.


284 At least nine U.S. Navy dolphins have gone "absent without leave" (also called "inadvertent escape") during open-water training or exercises, in all cases in areas far from their original habitat, making their survival unlikely. See NMFS, *The Marine Mammal Health and Stranding Report*. The most recent controversy related to the Navy's marine mammal program is the proposal to develop a "swimmer interception security system," naval jargon for using dolphins and sea lions to patrol harbors. In early 2007, the Navy published a notice of intent to prepare an environmental impact statement (EIS) on a proposal to move several of its dolphins and sea lions to Washington State, to patrol the Kieap-Bangor submarine base there. *Federal Register* 72 (2007), 6335. As noted in the comments on this notice submitted by The HSUS:

Most of the dolphins in the DoN [Department of the Navy] marine mammal program were captured or are descended from dolphins captured in the Gulf of Mexico or Atlantic Florida—they are not physiologically adapted to tolerate cold water such as that found in Puget Sound for a prolonged period of time. Bottlenose dolphins are not naturally found in Washington's waters—the water temperature north of central California, in fact, is outside of their normal tolerance limits. The DoN itself recognizes this and plans to return the dolphins to heated enclosures on a regular rotation, after some number of hours on active duty during any particular day. This is a routine the DoN has developed on previous cold-water deployments. The very fact that this rotation is necessary demonstrates that the dolphins are being forced to perform in an environment outside their temperature tolerance limits.

At the time of this edition's publication, a draft EIS had been published and released for public comment.

**CHAPTER 9: MORTALITY AND BIRTH RATES**

285 Michael Hutchins of The Wildlife Society notes in an article that "zoos should deal with the increasing media and public interest in zoo animal deaths, including: 1) a greater commitment to studying the reasons for mortality in a wide variety of species; and 2) an increased investment in record keeping and analysis," 101. M. Hutchins, "Death at the zoo: The media, science, and reality," *Zoo Biology* 25 (2006): 101–115. The public display industry's claim that animal mortality is "natural" and "expected," and that the focus by those who oppose captivity on the natural phenomenon of death is overly emotional and unscientific, seems unwarranted given this article's implicit admission that the industry has in fact given insufficient attention to studying captive wildlife mortality patterns or even to keeping adequate veterinary records. Rigorous record-keeping should be routine and the industry's public relations rhetoric insists that it is, but this is apparently overstating the case.
Pinnipeds and Other Non-Cetaceans

Average annual mortality rates for pinnipeds in captivity (other than one year of age) have been calculated to be: 2.23 percent (Steller sea lion, *Eumetopias jubatus*); 4.3 percent (South American sea lion, *Otaria flavescens*), and gray seal, *Halichoerus grypus*); 4.9 percent (South African fur seal, *Arctocephalus pusillus*); 3.5 percent (California sea lion and harbor seal); 8.2 percent (northern elephant seal, *Mirounga angustirostris*); and 11.6 percent (northern fur seal, *Callorhinus ursinus*). Small and DeMaster, “Survival of five species of captive marine mammals”; S. P. Roberts and D. P. DeMaster, “Pinniped survival in captivity: Annual survival rates of six species,” Marine Mammal Science 17 (2001): 381–387.


California sea lion pup mortality in captivity is 14.2 percent (on average), while mortality rates in the wild are much higher—the result of a high level of hostworm parasites in pups. See http://www.osc.noaa.gov/mmml/california/research/cpe/research.php?arhmmmlccep0808; Small and DeMaster, “Survival of five species of captive marine mammals.”

South American sea lions and northern fur seals in captivity have a pup mortality rate of 66.2 percent and 66.5 percent, respectively. Roberts and DeMaster, “Pinniped survival in captivity.”

The average annual sea otter mortality rate in captivity (for animals held from 1984 to 1992) was calculated to be 5.5 percent (ranging from 11.8 percent to zero percent depending on the facility—endnote 167 notes that the mortality rate calculated for animals held from 1955 to 1996 was higher), whereas mortality rates of 11 to 48 percent were recorded for wild otters in California. However, due to the differences in how data were collected, it was impossible to determine whether mortality rates were significantly lower in captive sea otters. B. A. Jones and D. P. DeMaster, “Survivorship of captive southern sea otters,” Marine Mammal Science 17 (2001): 414–418.

Christopher Andrews, PhD, conversation with N. Rose, 21 July 1993.

The HSUS is working on several projects using a contraceptive method known as immunocontraception, which is a promising method of controlling reproduction in wildlife, both in the field and in captive situations. A small number of dolphinaria and aquaria have inquired about and experimented with this contraceptive method.

Bottlenose Dolphins


One analysis determined that calf mortality in captivity was much higher than in the wild, but the mortality data from the wild population were probably incomplete. T. H. Woodley et al., “A comparison of survival rates for free-ranging bottlenose dolphins (*Tursiops truncatus*), killer whales (*Orcinus orca*), and beluga whales (*Delphinapterus leucas*),” Technical Report No. 97–02 (Guelph, Ontario: International Marine Mammal Association, 1997).

295 For information on causes of death of newborn calves, see also XNMS, The Marine Mammal Inventory Report.

Orcas and Other Small Whales

See http://www.ces.co.nz/orcas/ocacast.htm for the latest statistics known.

Two SeaWorld documents from the 1990s made the original claim of a 35-year life span for orcas. These were SeaWorld Corporate Zoological Department, The Facts about SeaWorld’s Killer Whales (SeaWorld, 1990), and SeaWorld Corporate Zoological Department, A Discussion of Killer Whale Longevity (SeaWorld, 1994).

See http://seaworld.org/animals/info/info-boots/killer-whale/longevity.htm. On the same web page, SeaWorld also acknowledges that “[scientists in the Pacific Northwest] believe that if a killer whale survives the first six months, a female’s life expectancy is 30 years and a male’s is 30 years” (emphasis added), although this life history information is accepted as factual by the international scientific community. Olesiuk et al., “Life history and population dynamics of resident killer whales (*Orcinus orca*) in the coastal waters of British Columbia and Washington State,” and Ford, “Killer whale, *Orcinus orca*” are considered the definitive sources for life history information on this species. Two additional points: 1) SeaWorld’s website neglects to clarify that the life expectancies of 50 years for females and 30 years for males are the mean, not the maximum, and 2) all whales captured from the wild have in fact survived the first six months of life (all orca captures are of weaned individuals; weaning occurs at about 2 years of age). That is, a good number of the orcas captured from the wild over the decades should have (and could have) achieved at least the mean life expectancies, yet very few have. Four or five males have surpassed 25 (assuming they were more than three years of age at capture), while only one, Ulises, has surpassed 30 (he is believed to have been born in approximately 1977); four or five females are believed to have survived beyond 30 years of age and only two, still alive, have lived past the age of 40 (see endnote 302). Ironically, the older these two females get, the more difficult it will be for SeaWorld and other facilities holding orcas to explain why most of their orcas die in their teens and twenties.

For a complete list of individual whales in the Pacific Northwest populations with known or estimated ages, see Olesiuk et al., “Life history and population dynamics of resident killer whales (*Orcinus orca*) in the coastal waters of British Columbia and Washington State,” and Ford et al., Killer Whales.

These data on orca longevity and life expectancy are most recently cited in Ford, “Killer whale, *Orcinus orca*.” SeaWorld does not mention these statistics in its killer whale information book (see endnote 295).

These analyses include K. C. Balcomb, Analysis of age-specific mortality rates of Puget Sound killer whales versus SeaWorld killer whales (The HSUS, 1994); The Humane Society of the United States, Small Whale Species: The Case Against Captivity (Washington, DC: 1993); Small and DeMaster, “Survival of five species of captive marine mammals”; and Woodley et al., “A comparison of survival rates.” It should also be noted that the calculated mortality rates of captive orcas do not include stillbirths, deaths due to breeding complications, or the 12 orcas who are known to have died during the capture process.

These two are females—Lolita at the Miami Seaquarium and Corky II at SeaWorld San Diego.

See http://ces.co.nz/orcas/ocacast.htm for a complete list of all known captive orcas and pregnancies—this website is regularly updated and is compiled from official government records (primarily from the
United States, as other countries do not require inventories), media reports, and information submitted by animal protection activists around the world. The list is almost certainly incomplete regarding pregnancies, unconfirmed births, spontaneous abortions (miscarriages), and stillbirths, making the calculated calf survival rate generous. A particularly unlucky female, Corky II at SeaWorld San Diego, has had at least seven unsuccessful pregnancies. Twelve of the viable calves are now dead (aged two to 15 years at death), leaving 28 living captive-born orcas at the time of this edition’s publication, the oldest 22 years of age, but more than half of them less than 10 years old.

304 On average, it is estimated that 43 percent of orca calves in the wild die during the first six months of life. Ford, “Killer whale, Orcinus Orca.”

305 Clubb and Mason, “Captivity effects on wide-ranging carnivora.”


308 See http://www.seaworld.org/animals/links/info-books/beluga/ longevity.htm for the outdated information on this topic available from SeaWorld’s website. This “educational” information may accurately reflect SeaWorld’s experience with its captive belugas, but it does not accurately reflect the latest scientific research.


Other Cetacean Species


Conclusion

311 Reeves and Mead, “Marine mammals in captivity.”

CHAPTER 10: CONCLUSION

312 Closures: Pittsburgh Zoo (dolphins exhibit only closed), Oklahoma City Zoo (dolphin exhibit only closed), Cedar Fair in Ohio (dolphin exhibit only closed), Steinhart Aquarium in California (dolphin exhibit only closed), Six Flags in Ohio (acquired by Cedar Fair, dolphin and orca exhibit only closed), Worlds of Fun in Missouri (seasonal dolphin show discontinued), Knott’s Berry Farm in California (seasonal dolphin show discontinued), Paramount Great America in California (seasonal dolphin show discontinued), Six Flags Over Texas (seasonal dolphin show discontinued), Six Flags in Missouri (seasonal dolphin show discontinued), Ocean World in Florida (entire attraction closed), Marine Life Aquarium in South Dakota (entire attraction closed), and Marine Life Oceanarium in Mississippi (entire attraction destroyed by Hurricane Katrina). Openings: Dolphin Connection in Florida (new attraction), Discovery Cove (separate SeaWorld Orlando attraction), the Texas State Aquarium (new exhibit), and the Georgia Aquarium (new attraction). Other dolphinaria, amusement parks, and aquaria have expanded or contracted already existing marine mammal exhibits and are not included in this list.

313 South Carolina is the only U.S. state to prohibit the public display of cetaceans.


315 These include the city of Vodnjan, Croatia; the city of Virginia Beach, Virginia, USA; the city of Denver, Colorado, USA; and the city of Calgary, Alberta, Canada. The government of Panama, after two years of debate and controversy, decided not only against the building of a dolphinarium, but also against allowing the capture of dolphins from its waters.


317 The only exceptions would be the rescue and rehabilitation of stranded marine mammals and the maintenance of animals who cannot be released.

APPENDIX I

La Paz, Mexico

318 Diebel, “Trapped in an underwater hell, Mexico pressed to free dolphins”; Alaniz and Rojas, Delphinorcas, 204–205.

Bayahibe, Dominican Republic

319 See WSPA, Letter: WSPA Calls on Travel Industry to Pull Support for Captive Dolphin Program, www.wspa-usa.org/pages/310_letters_manati_park.cfm, 30 November 2001. The sudden appearance of these ready-trained animals suggests that Manati Park had another facility in the Dominican Republic that was holding “spares,” already trained animals. As these animals do not appear on any CITES documentation, the assumption is that they were either illegally imported or taken from Dominican waters without proper permitting prior to the incident reported here.


321 Under Article 11 of the Protocol Concerning Specially Protected Areas and Wildlife (SPAW Protocol) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the Cartagena Convention), it is required that “Each Party shall ensure total protection and recovery to the species of fauna listed in Annex II,” which includes cetaceans, “by prohibiting: the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products; to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation or migration, as well as other periods of biological stress.” Therefore, capturing wild cetaceans for commercial public display is a clear violation of this regional treaty. See also Parsons et al., “A note on illegal captures of bottlenose dolphins (Tursiops truncatus) in the Dominican Republic.”

322 In 2004, Manati Park opened a second facility, Parques Tropicales (Dolphin Island–Manati Park) at Punta Cana. Five dolphins were housed in the new sea pens—there was speculation that these were the survivors of the eight animals captured in August 2002. The Dominican Republic, unlike its neighbor Haiti, is still heavily forested over much of its territory, and locals believed the dolphins had been
held for two years in a tank hidden by jungle, a period during which three dolphins may have died.

325 On Manati Park's website, it is stated that "Manati Park, in collaboration with various National and International Institutions, develops educational, research and reproduction programs on the autochthonous species of the Dominican Republic that are in danger of extinction." http://www.manatipark.com/eng/naturaleza.htm. This is yet another example of a dolphinarium or aquarium trying to camouflage its unethical activities with a conservation and education veneer.

Solomon Islands


325 Parties to CITES may trade with non-Parties, but only if non-Parties meet the treaty's requirements.

326 Omata et al., "Antibodies against Toxoplasma gondii in the Pacific bottlenose dolphin (Tursiops aduncus) from the Solomon Islands," 965.


328 Besides being in violation of the CITES agreement, the Solomon Islands dolphins were being held in conditions in Cancún that violated the conditions of the import permit granted by Mexican authorities. One of the conditions was to keep the imported "exotic" dolphins (which belong to the species Tursiops aduncus, as opposed to Tursiops truncatus—the species that was already being held in the Cancún dolphinarium) separate from the park's existing dolphin population—this was not done. The dolphins were never properly quarantined and were kept in adjacent pens, allowing the possible transmission of non-endemic pathogens and diseases.


330 Randall Reeves, the chair of the IUCN Cetacean Specialist Group (CSG), Frances Gulland, a member of the IUCN Veterinary Specialist Group, and Robert Brownell, a member of the IUCN CSG, wrote to Willem Wijnsteek, the Secretary-General of CITES, stating, "We are not aware that any credible, peer-reviewed studies of bottlenose dolphins have been undertaken in the Solomon Islands since 2003. Accordingly, we have not changed the conclusion we reached in 2003 that a non-detriment finding under CITES is not possible for these populations, and that exports should not take place," 2. R. Reeves et al., letter to W. Wijnsteek, 18 June 2007.

331 CITES Resolution Conf. 14.7.


335 Out of 124 dolphins sent to Mexico in 2003, at least 12 had died by early 2008. This is an exceptionally high mortality rate in only five years for a species that can live 40 or more years. Senator J. Legorreta O., letter to Minister M. B. Tan, sent 7 May 2008.

336 The Review of Significant Trade is a process whereby trade in Appendix II species is examined to determine if exporting Parties are issuing appropriate NDFs. If the Animals Committee concludes there is reason for concern, it makes recommendations to the exporting Party, such as what scientific studies need to be done. These recommendations are passed on to the CITES Standing Committee. If approved by the Standing Committee, the recommendations are provided to the Parties; Parties must comply with the recommendations by established deadlines or the Standing Committee may recommend to other Parties that trade in CITES-listed species with that Party should be avoided. CITES Resolution Conf. 12.8 (Rev. CoP13).

337 Animals Committee 23, Doc. 8.5.1.

338 See endnote 59 for more on this issue.


340 M. Berman, email message to N. Rose, 30 June 2008.

341 R. R. Reeves and J. Horokou, "Non-detriment finding for Tursiops aduncus in the Solomon Islands," WCIS-Mammals, Case Study 2, November 2008. Horokou works in the Solomon Islands Ministry of the Environment and co-authored the following statement: "Much more and better-quality information than presently available will be needed on the distribution, population structure, movements (bycatch, hunted, live-captured) and numbers of Indo-Pacific bottlenose dolphins in the capture region before a credible NDF can be made and additional collections for export, or exports of animals already collected, are authorized," 11. Yet despite the admission by this government official that any NDF for Solomon Islands T. aduncus is currently not credible, within one month of this case study's presentation, seven more dolphins left Solomon Islands with a CITES export permit and were accepted by the Philippines.
From:
Sent: Monday, 24 September 2012 1:38 p.m.
To: Animal Welfare Submissions
Attachments: Submission-100012-Animal welfare matters.docx

Hello,
Please see attached Road Transport Forum NZ submission on the Animal Welfare Matters discussion document.
In our submission we propose the introduction of Chain of Responsibility provisions within the Animal Welfare Act.
We have made this suggestion as similar provisions in Land Transport legislation have addressed concerns with those in authority requesting or requiring others to act in an unsafe manner.
We believe that adding similar legislation to the Animal Welfare Act would assist with discouraging and addressing unsafe animal handling practices.
We welcome further discussion on this.

For environmental reasons we have chosen not to forward hard copies of our submission

Regards,

Senior Policy Analyst
Road Transport Forum NZ
PO Box 1778 | WELLINGTON 6140 | Level 3 | 93 Boulcott Street

8/11/2012
ROAD TRANSPORT FORUM NEW ZEALAND INC

SUBMISSION

ON

Animal Welfare Matters

Contact:

Policy Analyst
Road Transport Forum NZ
P O Box 1778
Wellington

SEPTEMBER 2012
1.0 **Comment**

1.1 We welcome the opportunity to respond to the Animal Welfare matters discussion document (the document). The document poses a number of questions regarding animal welfare and seeks views on them. The discussion document broadcasts the desire to create a more robust animal welfare system. Part of that discussion centres on creating a system that will become more flexible in order to deal more successfully with lower levels of animal welfare offending.

1.2 The discussion document rightly points out that there is a substantial gap in the current animal welfare legislative system that makes dealing with low level offending difficult. An infringement regime should provide a less complicated means of dealing with these types of offences.

1.3 This may require an increased level of enforcement resource. Additional resource and adaptation will be required to ensure animal welfare enforcement can undertake the additional responsibilities that an infringement regime would introduce.

1.4 We sincerely hope that this will be possible. Doing so would provide much needed assistance, not only to road freight transporters, but also to other animal handlers.

1.5 The implementation of an infringement regime and associated regulations could benefit livestock transporters (and others) by isolating them from animal welfare issue instigators.

1.6 Livestock transporters can be held accountable for transporting unfit livestock. This is the case even if an animal’s welfare is compromised prior to being loaded onto a transport vehicle. Livestock transporters should not be held accountable on those occasions. The Act’s current
answer to this is to require that livestock be inspected prior to transport and rejected if necessary.

1.7 The current system expects livestock transporters to take on enforcement responsibility. As a link in the transport chain this should not be the transport operator’s role and anything that reduces this burden would be welcome. The proposed infringement regime may be a tool to achieve this but it is not the only tool that should be considered.

1.8 Understandably, livestock transporters should be identifying unfit animals prior to transport but all too often refusal to transport animal’s results in undesirable confrontations between livestock presenters and livestock transporters.

1.9 We expect that the issuing of infringements to those who present unfit livestock for transport (or those who force livestock transporters to transport unfit animals) will act as a much needed deterrent against continuing this type of behaviour.

1.10 Clearly this sort of behaviour is unacceptable. These scenarios are not only limited to the transport sector. Similar situations can and do arise in other animal handling scenarios. The suggested legislative changes, if correctly executed will significantly assist with addressing these issues.

1.11 However, the implementation of an infringement regime would not sufficiently deal with incidents where third parties or those with authority over animal handlers may attempt to influence them (animal handlers) to carry out procedures that may be harmful to animals.

1.12 Unless other mechanisms are put in place to compliment the proposed infringement regime results may be sub-optimal. There are ways to bolster legislation which we have discussed below.

1.13 **Chain of responsibility offences**
The Land transport Act has created offences for every person who, by act or omission, directly or indirectly causes or requires (whether or not the sole cause) a driver to exceed legislated safety requirements relating to speed, fatigue and mass.

1.14 The review of the Animal Welfare Act provides the opportunity to put similar requirements into it. Doing so would make those that authorise practices that are harmful to animals more readily accountable for their behaviour. Chain of responsibility provisions send clear messages that mistreatment of animals will not be tolerated and that the law has provisions to identify and deal with those that do.

1.15 Doing so would reduce unnecessary cost, aggravation and regulatory burden.

2.0 Therefore, the industry agrees in principle to Question 5:

**Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines**

2.1 This proposal can only be agreed to in principle until more rigorous discussion is held on it. As discussed above the concept of an infringement regime offers considerable merit but there are areas that may require further attention to create a more workable and robust system.

2.2 The suggestion to replace codes of welfare with more enforceable standards seems a reasonable suggestion. However, one benefit of the code of practice format is that requirements are broadcast in a clear and easily understood manner. Regulations are not as easily understood and it seems sensible to ensure that animal welfare requirements are easy to understand.

2.3 Therefore, it makes sense that if regulations are to be introduced they should be easy to understand. This may require the release of relevant information material.
3.0 **Question 6: What are the risks and benefits of proposal 5?**
We are aware that MPI has engaged with the Justice Department to discuss this topic and provide the following comments with that in mind.

3.1 The risk with the proposal to implement an infringement regime depends on the ability for enforcement to deliver a consistent, practical and on-going application of the rules. There is also a risk that if an infringement regime is put in place that the level of offending may not appropriately match the level of infringement. It is also possible that proposed infringements may not act as strong enough deterrent to potential offenders.

3.2 Two factors are of relevance with this scenario. One is that the level of penalty should be sufficient to change offender behaviour. The other (and probably more important aspect) is that as offenders accrue multiple infringement penalties the probability of these fines being paid significantly reduces.

3.3 It has been well documented and advertised in a number of cases where offenders have had penalties significantly reduced in order to match their ability to pay them. In such examples the infringement regime does not create a large enough deterrent to change offender behaviour. Clearly, this sends the wrong signal to offenders.

3.4 It may be necessary therefore to also include Summary Proceedings legislation within the regulatory system to circumvent this type of behaviour.

4.0 **Q7: What impact will the proposed changes have on you and/or your organisation or sector?**

4.1 Before answering this question it is necessary to provide a back drop of the atmosphere that livestock transporters operate under. The livestock transport sector is extremely competitive with marginal
returns on investment. Transport operators are generally not in the position to negotiate against customer authority.

4.2 We are sure that similar situations exist within other sectors of the animal handling domain. With such tight margins and so much at stake it will be important to ensure that if infringements are being issued that the correct party be identified and issued with that infringement.

4.3 Therefore it is of paramount importance that mechanisms such as chain of responsibility or other similar provisions be considered for inclusion in welfare strategy amendments.
Submission by Rural Women New Zealand:


25 September 2012
Animal Welfare Strategy and Legislation Review
Ministry for Primary Industries
PO Box 2526, Wellington 6140

Rural Women New Zealand (RWNZ) represents the interests of rural families in New Zealand. It speaks for the 600,000 New Zealanders and over 200,000 households in rural communities, only 14% of whom are farming families on economic units. The other 86% of households include teachers, mechanics, mums, dads, students, grandparents, health and home care workers, seasonal workers, plumbers, administrators, truck drivers, vets, lifestyleers and all the other vocations that make up rural communities.

Rural Women New Zealand makes submissions on issues relevant to its four portfolio areas of Education, Health, Land and Social issues.

Thank you for the opportunity to comment on the proposals for a New Zealand Animal Welfare Strategy and amendments to the Animal Welfare Act 1999.

We support the intent of the Amendments

Rural Women New Zealand support the overall intent of the amendments. We appreciate that under the current system minimum standards are not directly enforceable and that not everyone is meeting them. We are well aware of the damage that even isolated welfare incidents could do to our reputation as a responsible agricultural producer, and to the significant financial benefit that accrues to this country as being seen as a producer of quality, sustainable and trustworthy agricultural products.

As such Rural Women New Zealand supports the development of a coherent national strategy based in the core values of: it matters how animals are treated; we have
responsibilities towards animals in our care and animals influenced by our activities; and using animals is acceptable as long as it is humane.

Specific Comments
Q9. Do you agree that having “transitions” and “exemptions” is a better way to handle the situations that currently fall under “exceptional circumstances”? Rural Women New Zealand says this is a sensible approach as it does try to do away with the idea that codes are being used to indefinitely extend undesirable practices. However, we see an opportunity here: although it’s a good move to undertake periodic reviews of the exemption once they are in place, we suggest different sectors should be given an opportunity to make a case why certain practices could be viewed as “genuinely exceptional circumstances”. New practices could come to life, and a periodic review of those practices gives transparency and the opportunity to reflect current thinking.

Q 15. Do you agree with the proposal to create directly enforceable standards for the export of live animals? ..... Q16. Do you agree with broadening the purpose of the exports part of the Act so that New Zealand’s reputation can be considered when making rules or deciding on applications?

In principle we support the proposals articulated in Q15 and Q16. We understand the current limitations and agree that everyone would be helped if the rules were clarified and backed up with a range of compliance tools. However, there is a balance – the rules and compliance tools have to be credible and adequate to do the job, but not be so draconian as to kill the industry by being impractical and prohibitively expensive to implement.

Q 27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?

As stated earlier, we broadly support the intent of this change. To make it work in practice the ground would need to be well prepared – that is, MPI working closely alongside industry to make sure people are properly informed well in advance, and make sure that messages are coherent and consistent. We note positively the intent to restrict these powers to inspectors with the appropriate level of training and experience – we would note that while one serious welfare animal incident could have implications for trade, one really bad call by an animal inspector could also sour relations between MPI and the sector.

Q30. Do you agree with the proposal to make drowning a land animal an offence?

Rural Women New Zealand finds this proposal somewhat confusing. If it is really about about the populist images of kittens and puppies being drowned because no-one wants them, we would have thought there were already regulations and penalties for that. It seems to us that the underlying rationale for this move is more about administrative efficiency than animal welfare.
Q31. Do you agree with the proposal to clarify that wilful and reckless ill-treatment offences apply to animals in a wild state?
We support this proposal. Hunting and fishing does put food on people’s tables, but unnecessary cruelty to wild animals is what it is – unnecessary and cruel. We do, however, support the proposed technical amendment that requirements for the care and killing of all captive-bred and farmed fish do not include fish in a wild state that are caught in recreational fishing or those hunted or killed for pest management purposes.

Section 4.7.5. Views on what controls are appropriate for each of the surgical procedures listed below

These are Rural Women New Zealand's views on appropriate levels of control for certain surgical procedures:

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Level of control</th>
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<tr>
<td>Mulesing</td>
<td>E</td>
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<td>Tail docking of horses</td>
<td>E</td>
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<tr>
<td>Laparoscopic artificial insemination of sheep &amp; goats</td>
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<tr>
<td>Surgical embryo collection in sheep &amp; deer</td>
<td>B</td>
</tr>
<tr>
<td>Tail docking of dogs</td>
<td>B</td>
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<tr>
<td>Tail shortening of cows</td>
<td>**</td>
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<tr>
<td>De-sexing of companion animals</td>
<td>B</td>
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<tr>
<td>De-sexing of horses, llamas &amp; alpacas</td>
<td>D</td>
</tr>
<tr>
<td>Tooth extraction in horses and companion animals</td>
<td>B</td>
</tr>
<tr>
<td>Liver biopsy</td>
<td>B</td>
</tr>
<tr>
<td>Removal of dew claws in dogs</td>
<td>D</td>
</tr>
<tr>
<td>Caslick's procedure (surgery to vulva of horses)</td>
<td>**</td>
</tr>
<tr>
<td>Dubbing (removal of comb from poultry)</td>
<td>**</td>
</tr>
<tr>
<td>Surgical castration of livestock on farm within certain age</td>
<td>D</td>
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<td>limits and under certain conditions</td>
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The key for the above table is:
A. **Not significant**: Can be carried out by anyone
B. **Significant**: May only be carried out by a veterinarian or a person who is acting under the direct supervision of a veterinarian and is being taught veterinary science at an undergraduate level
C. **Restricted**: For significant surgical procedures, they may only be carried out if the procedure is in the animal's interests and using appropriate pain relief
D. **Controlled**: For significant surgical procedures, they may also be carried out by the owner of an animal, or their employee with written veterinary approval.
E. **Prohibited**: No one may carry out the procedure.
**. RWNZ has no view.

Education and Measuring Performance – an Industry/Professional role

Rural Women New Zealand notes the Cabinet paper says “professional and industry groups should take a proactive and leading role, particularly in educating their
members and measuring welfare performance." Conceptually, much is to be said in
favour of letting those on the ground, "near the action", take a lead role in these areas.
We would anticipate and trust that really practical solutions would result, the emphasis
is seen by all parties to be one of coming up with practical and workable solutions for
the farmer concerned, and that uptake of ideas and solutions would be improved
because they would be seen as coming from peers rather than perceived as being top-
down.

But MPI’s role is crucial, too. They need to be seen as part of the solution (and, to be
fair, good progress is being made) and they need to actively collaborate and engage
with farmers and their representatives.

We are in agreement about the need for education — in fact, it’s our belief that long-
term attitudinal changes will only really start to take effect if the notion of appropriately
treating animals is imbued early — through resources aimed at children, for instance
(see later in this submission).

In terms of measuring performance, we have had difficulty around this. Not so much
the concept, but, more about what this may mean in practice. It’s unclear to us exactly
who is being monitored. Is it, for example, individual farmers, stock firms (e.g., at sale
yards), stock truck operators, meat processors, vets/others involved with live exports?

With some of these you might achieve a workable regime of spot checks and instant
fines. But, it’s different when dealing with individual farmers who own stock and
property. If it’s being suggested that there would be mandatory form-filling for potential
or actual incidents, Rural Women New Zealand urges the authorities to think long and
hard about this. Mandating form filling for trivia will not make a difference to animal
welfare. Only education, civilized behavior, and the financial bottom line will.

Animal welfare issues do not sit in isolation

Notwithstanding that there are highly educated younger people coming into the
industry, we all know the reality of an ageing farming population in this country. With
age and the increasingly complex demands of farming stress levels rise. Sometimes
even the most experienced and professional farmer and land/stock manager, in
today’s competitive and uncertain environment, cannot afford to employ help so things
get missed and easy solutions taken.

The types of stressors that can arise on farming operations and which can lead to
animal welfare issues are, for example, lacking knowledge of how to manage the farm
during an adverse event, financial stress leading to inability to afford supplementary
feeds and animal treatments (e.g., vet, vaccines, drenches etc).

Consider the alarmingly high suicide and attempted suicide rates amongst farmers.
This is not unrelated to animal welfare issues.

In some people there is a view that it’s preferable to vent frustration and anger by
striking an animal than to go home and take it out on the family. We in no way
condone this, but we can see how such attitudes and actions could develop. We do
not think this attitude is unique to farmers or stock handlers exclusively, but they have
greater opportunity to vent their anger, frustration, and fear on an animal. It would be
great if MPI acknowledged this and offered some support or solutions.

Rural Women New Zealand believes that animal welfare is necessary and it is
appropriate it be addressed, but, we also need to acknowledge that at some level it’s
treating the symptoms rather than the disease. Animal welfare incidents are very often
a ‘flag’ for other stress indicators on the farm. For instance, the recent report, “Pets as
Pawns”, clearly shows the relationship between acts of animal cruelty and a greater,
often hidden, malaise amongst affected families. Threats against family pets and farm
stock can be used as a way of controlling family members. There are examples of
farm women being manipulated to stay in an unsatisfactory relationship by threats that,
if they leave the farm, their horse, dogs, sheep, calves would be hurt or neglected.

**Influencing Attitudes By Education**

Rural Women New Zealand believes that one piece of good news is that those farmers
who are entering the industry are, by and large, highly trained professionals (most
have degrees, animal husbandry training, and animal handling training). Increasingly
the attitudes of the younger generation of farmers will become the norm. – and this will
be good for the industry as a whole, and positive in terms of animal welfare.
Successful farmers (whatever their age) who lead by example, are always going to be
respected within their local communities and listened to, and emulated.

But, Rural Women New Zealand also believes that education needs to start young –
as children. Farm children learn behaviour towards stock handling from what their
parents do. This is different from behaviour towards companion cats and dogs, which
are often members of the family as opposed to production units.

We could see the possibility of sets of community-developed resources (perhaps 2) --
one around caring for pets generally, and one more specifically targeted towards
production animals. We would not see a production animal resource being solely the
provenance of rural schools. There is much to be said for educating urban children
around some of the realities around where their food comes from.

**Tail Docking in Sheep – A case in Point**

To the casual observer, some on farm practices could be seen as cruel for example: tail
docking particularly in sheep. This is not a fun pastime for the farmer; it is unpleasant, time
consuming, and expensive. But it’s essential if fly strike is to be prevented. If people saw sheep
affected by fly strike, they might understand the reasons. Fly strike is cruel to animals and it is
the farmer’s duty to protect them from it. If we allow sheep to die from, or suffer with, fly strike,
we are actually causing much more pain and suffering to the sheep than docking could ever
cause.

Rural Women New Zealand says there is another group of people who would benefit
from understanding the New Zealand perspective on animals and animal welfare
issues. Increasing numbers of migrant workers coming to NZ farms – especially in the
dairy sector. They will bring with them their own cultural perspectives on animals and
how they are treated. There need to be resources in place so that migrant workers
understand attitudes to animals in this country and what are acceptable behaviours
towards animals on NZ farms.
We also believe that one should never underestimate the educative effects of the financial bottom line. Farmers, being business people, will respond if it's demonstrated to them that changing their behaviour will influence their profitability. A case in point is muelsing. Sheep farmers who persisted with the use of muelsing had their wool formally discounted at sales. Result: big drop in practice of muelsing.

Farmers respond well to facts. It would be helpful for all stock handlers, for instance, to be made aware of trends in reported animal welfare breaches over the last 5 years. Then they can assess in their own minds the appropriateness of their behaviour towards livestock. And be convinced of the need for an assessment of the proposals contained in the discussion document.

Often, changes in farmer behaviour come from peer pressure from neighbours, and from having respected local farmers as exemplars of desirable behaviours. There needs to be recognition of local farmers who can act as 'animal welfare champions'.

Finally, about delivering content. On many farms, it's often the women who are the information gatherers and disseminators for the farming operation. There are already significant volumes of compliance material heaped onto farming businesses, from the modest family unit to the large corporate. This needs to be absorbed and filtered by farmers. A great deal of this information will in all probability be imparted over the breakfast and dinner table. So, in terms of animal welfare information for farmers:

- talk to farmers, not at them;

- content needs to be written in plain English;

- the material needs to be easy to keep and easy to access;

- it needs to be perceived by readers not so much a compliance issue, but more "it’s the right thing to do", especially if it can be demonstrated as adding to farm profitability; and

- ideas/solutions have to be practical and workable on-farm.

Evidence-based knowledge and communications is the key to unlocking farmer uptake. Otherwise, lack of credibility will result in lack of acceptance.

Yours sincerely

National President
Rural Women NZ

Executive Officer
Rural Women NZ
SUBMISSION

BY THE
Royal New Zealand Society for
the Prevention of Cruelty to
Animals Inc

ON THE
Animal Welfare Act Review

September 2012
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Introduction

1. The following submissions are made on behalf of The Royal New Zealand Society for the Prevention of Cruelty to Animals (The SPCA).

2. The SPCA is the preeminent animal welfare and advocacy organisation in New Zealand. We have been in existence for 129 years with a supporter base representing many tens of thousands of New Zealanders across the nation.

3. The SPCA employs 90 warranted inspectors across the country and is the primary investigative agency with regard to the Animal Welfare Act 1999 (The Act). As a result of this and our extensive history of animal welfare enforcement under previous legislation, coupled with a comprehensive overview of how the Act has been administered since its inception, we firmly believe the following submissions to be well considered, apposite and necessary.

4. Although the coming into force of the Act in January 2000 marked a breakthrough for animal welfare in New Zealand we believe we have fallen behind other nations in the intervening 12 years and further careful consideration and work is required in order to once again see New Zealand lead the world in animal welfare.

5. Our submissions are provided in a composition to respond to paragraphs 4.1 to 4.11 of the Animal Welfare Matters discussion paper (the document).

6. We wish to thank the Ministry for Primary Industries for the opportunity to enter our submission on this review and sincerely hope that the government take this opportunity to augment the Act in the spirit with which it was first passed into parliament,
that being to improve the welfare and prevent the ill treatment of animals within New Zealand.

Standards of Care and Conduct Toward Animals

7. The SPCA is generally in favour of the proposal to transfer the current Codes of Welfare into more enforceable regulations which will be supported by guidelines. We also note that there are areas of welfare that are not currently covered by Codes that would also require writing into regulations, these will be discussed later. As stated in the proposal document the ability for our inspectors to enforce the required welfare levels prescribed in the current Codes is severely hampered by the disjointed and vague manner in which the minimum standards are worded and the inability to tie them back to the legislation.

8. For this reason the SPCA urges the government to ensure that any amendment to the Act allows for breaches of the prescribed regulations to be easily identified, and gives inspectors a variety of tools with which to ensure compliance or take action against any offending. While we are aware that this review does not concern itself specifically with the creation of any regulations we feel it timely to raise some points of importance in relation to any such regulations in general.

9. The SPCA is concerned by suggestions that the regulations may be broad in nature and take the form of outcome based standards rather than prescriptive standards. Regulations that sanction a particular type of behaviour or conduct toward animals will need to be able to be easily interpreted as to when and where they are being met or not being met. For this reason we submit that any regulatory scheme introduced by an amendment to the Act take the form of prescriptive requirements that provide for an acceptable level of care for each individual species.
10. We would also take the opportunity to point out that regulatory standards for the treatment of animals, including production type animals, will be applicable to all owners and persons in charge of such animals including the ever increasing number of small holder and lifestyle type situations that exist in New Zealand. For this reason it is important to consider what requirements will be able to be met by non commercial interests as well as our large scale operators. We feel this gives even greater impetus to the need for clear black and white standards that can be easily understood by both investigators and persons in control of each animal type.

11. The current system of Code development we feel has been far too heavily influenced by the vested interests of industry and lacked any real and significant consultative process. We would urge the government to consult widely and in great detail with the SPCA and other animal welfare and advocacy groups during the drafting of any regulations.

Criteria to Apply in developing Animal Welfare Standards

12. The SPCA have for some time been of the opinion that the use of s73 and its “exceptional circumstances” provision has allowed for non compliant welfare practices to exist in New Zealand when alternative methods or techniques were available. Battery hen cages, sow crates and farrowing crates are some of the more well publicised of these and the welfare impacts of these practices continuing have been severe. Section 73 effectively sanctions non compliance with the Act and this is recognised in the proposal.

13. We feel this review provides the perfect opportunity for the government to bring an end to the continuation of outdated and harmful husbandry practices and submit that the following occur.
14. The suggestion that matters relating to "practicality" and "economic impact" be explicitly brought into the process for considering when non-compliant practices are allowed to continue is indicative of a contra welfare perspective and, although we believe these criteria are already actively engaged at the moment as admitted in the document, their inclusion in legislation will only serve to inhibit progress to more humane systems. We would take this moment to reiterate the point that the Animal Welfare Act is a statute written with the intent of parliament;

To reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular,—

(i) to require owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals;

(ii) to specify conduct that is or is not permissible in relation to any animal or class of animals

15. Even should matters such as "economic impact" and "practicality" need to be considered when implementing the legislation the foremost thought of the legislators must be an intent to "attend properly to the welfare" of all animals. For this reason the SPCA finds it simply unacceptable that the proposal suggests a need to exempt some practices from the bounds of the Act for an indefinite period.

16. While we agree that the current s73 needs to be amended we submit that s73 (4) (a) and (c) be reworded to more closely express the intent of parliament that all practices must comply with the obligations imposed by the Act except in truly exceptional circumstances and then only for a finite period whilst transition to a compliant system takes place. We strongly disagree that there is a need for an indefinite exemption criteria in a country such as New Zealand where societal expectations
and resource availability are such that the continuation of outdated and outmoded farming practices are both publicly unpopular and unjustifiable.

17. The concept of regulatory reform purports to bring with it the ability to be flexible and to react to changing practices more quickly, certainly than the current codified system can. With this in mind we question why the government would look to extend the reasons as to why a particular non compliant practice may continue, or even offer an indefinite exemption. We would view the move to regulations and the expected improvement in efficiency they bring about to mean that there is no longer a need to exempt unlawful practices as there is currently.

18. We submit that the wording used not include the terms “practicality” and “economic impact” and instead, taking into account that the regulations will be directly enforceable, be phrased so as to make it clear that any non compliant practice must be ceased immediately or a timeframe given of up to five years within which the practice be made compliant.

19. With regard to s73 (4)(b) SPCA inspectors are consistently reporting of an increase in homekill situations arising in urban and rural areas involving animals, mainly poultry and sheep, where the animals are not being stunned before being bled out due to religious beliefs. This is completely unacceptable and we feel that any suggestion of including or extending the current exemptoning paragraph will only serve to confuse what is and what isn't legally acceptable in New Zealand. In a secular country the SPCA believe there is no place for animal welfare to be compromised due to religious beliefs; such separation of requirements and offences does not occur in any other penal regime in the country and the SPCA can see no reason as to why it should be applied here.
20. We submit therefore that s73 (4)(b) be repealed or severely restricted and that the Act make it clear that all animals, without exception, should be required to be stunned before slaughter, and to remain insensible until death occurs. Such clear drafting would assist inspectors to explain to citizens what is and what is not permissible practice in New Zealand.

Role of the National Animal Welfare Advisory Committee

21. The SPCA continue to be concerned with the inherent conflict of interest that comes with having New Zealand’s animal welfare legislation administered by a Ministry whose main focus is the promotion of economic growth via the production and sale of animal products. The current proposal to subsume all regulatory and guideline drafting within the MPI would appear to only exacerbate our concerns. Although it could never be said that NAWAC was a truly independent body its existence did at least allow for a modicum of separation between the Ministry and industry lobby groups.

22. As stated in the proposal one of the purposes of the review is to provide for “the ability for standards to evolve with societal expectations, scientific knowledge, good practice and available technology” with the intent of creating an “efficient process for developing standards”. The SPCA are concerned that without a strong, truly independent research and advisory committee the ability of the ministry to remain focused on improving animal welfare standards in a manner that remains commensurate with the intent of the Act, and that is as free as possible from economic or industry persuasion, will be sorely hindered.

23. For this reason we agree with the proposal to maintain an independent committee on animal welfare and for that committee to be freely funded to pursue research on ideas,
techniques and developments in all aspects of animal welfare as they affect New Zealand animals.

24. We would submit that this committee should be adequately funded i.e. receive an increased budget from the current one, in order to second expert assistance on an international level when researching issues pertinent to improving animal welfare in New Zealand.

25. We further submit that this committee should be mandated to publish all such research, free from hindrance, for the benefit of the greater public body of knowledge on animal welfare.

26. We believe this restructure presents the government with the perfect opportunity to refresh the membership of NAWAC and to take a new approach to the committee’s make up, purpose and powers. The SPCA would like to see an increased level of animal welfare and animal advocacy representatives on the committee and feel the creation of a forward thinking and world leading animal welfare research and development group would hugely benefit New Zealand’s reputation internationally.

Live Animal Exports

27. The SPCA is opposed to the practice of live animal export for slaughter and would like to take this opportunity to submit for a total prohibition of this practice. We accept the proposals in section 4.6 of the document do suggest some amendments which carry merit but we continue to be extremely concerned with the apparent indication given that live export for slaughter may continue to be an option for New Zealand.

28. As the document rightly points out, the current system of issuing certificates for export lacks any real impetuous or enforcement
capability. Although the Director General may impose conditions on an Animal Welfare Export Certificate these conditions have no legal effect. Even with the proposed modification to allow for mandatory standards to be applied to Export Certificates we feel that the risk to both animal welfare and the reputation of New Zealand as a responsible exporter is unjustifiably high. The ability to regulate and maintain animal welfare once animals are aboard a vessel is severely reduced, almost to the point of non existence. Due to its remote location any journey from New Zealand will inherently be a long and formidable one and the capacity to ensure that animal welfare remains at the levels mandated by the Animal Welfare Act cannot be guaranteed.

29. Indeed at the time of writing our neighbours in Australia are being confronted with the stark reality of just such a situation. The MV Ocean Drover with its load of 22,000 live sheep has been forced to remain at sea in the Persian Gulf where temperatures reach 40 degrees Celsius for a fortnight longer than expected. This is in addition to its 33 day journey from Australia and the ship still appears not to have a dock available at which to unload its cargo. This event is just one in a long line of similar experiences demonstrating that even after considerable government consideration of regulations around the issue of live export, and the introduction of so called tougher procedures and memorandums of understanding, animals continue to suffer unnecessarily via this practice.

30. In support we of this assertion we would point to a recent speech made by The Honourable Michael Kirby, recently retired judge of the High Court of Australia. Directing his substantial legal and administrative knowledge toward the subject of live animal exports from Australia he categorically denounced the way in which the government of Australia’s attempts to regulate the trade in live animals have proven unenforceable and have

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"Australian Sheep Stranded in Gulf" 4/09/2012
failed to offer any protection at all, to the detriment of the animals themselves and the country of Australia as a whole. He calls for an immediate ban on the practice and further states “There is nothing more powerful than an idea whose time has come...live export is where Australia should assert its standards”.  

31. The failure of the Australian example should act as a warning beacon that it is near impossible to regulate for such occurrences as adverse weather or the changeable quarantine practices of foreign ports, and accordingly it is near impossible to ensure the animals on board are afforded the level of protection our legislation prescribes.

32. This level of difficulty transfers itself to the treatment of the animals once they reach their intended destination. As subjects of the Animal Welfare Act the animals on these ships leave our shores with a level of protection that is enshrined in law. The SPCA firmly believes that the government’s obligation to maintain this level of protection does not stop when we board these animals for destinations beyond our borders.

33. Therefore the SPCA is seeking for the government to take the opportunity that this review provides to commit to a prohibition of the export of live animals for slaughter from this country.

Significant Surgical Procedures

34. As the primary enforcement agency in the country the SPCA has previously expressed concern that some painful husbandry practices have been allowed to continue in New Zealand due to an apparent lack of will on behalf of NAWAC or the Ministry to

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place relevant sanctions on their use. The wording of codes in this regard has been particularly troubling with phrases such as “experienced operator”, “competent operator” and the like being used to define who are able to perform, what are in effect substantial manipulations, on animals. Some of the procedures carried out on these animals would be considered to be “high impact” or “very high impact” in a teaching or research setting but have continued to be allowed in field settings.

35. It is our strong belief that in a modern progressive country such as New Zealand the requirement to afford animals the benefits of anaesthetic or analgesia whilst any form of painful procedure is carried out should be considered as a minimum requirement. In order to adequately provide for this level of humane practice it is our belief that operations involving manipulation, removal or surgical interaction with animals must be carried out either by a veterinarian or under the direct supervision of a veterinarian.

36. The SPCA has no issue with the proposal to allow for overseas qualified veterinarians or New Zealand registered veterinarians who are seeking practical experience before applying or reapplying for a practicing certificate to perform significant procedures under the direct supervision of a veterinarian. We do however have grave concerns over the proposal to allow for “skilled technicians” to carry out some controlled procedures. Were the government to go ahead with this proposal it would be broadening the number of people able to perform quite severe husbandry practices on animals.

37. It is our position that any act carried out on an animal that would otherwise leave the operator in breach of s28 or s29 of the Act should not be carried out unless done so by a veterinarian or under the direct supervision of a veterinarian, and the animal is afforded the appropriate level of pain relief. It would also be our expectation that procedures classified as significant and therefore only able to be carried out by veterinarians would be done so to a professionally competent level with the use of
anaesthetic and analgesia as and when necessary. Furthermore we submit that any practices that cause undue suffering with no commensurate welfare benefits be prohibited entirely.

38. With reference to the indicator levels provided in the document the SPCA submit that the following procedures be classified accordingly:

(a) Mulesing - Prohibited
This procedure is both inhumane and unnecessary. As the industry itself has indicated that it no longer intends to perform this practice we submit that this is the ideal time to prohibit it.

(b) Tail docking of horses - Prohibited
Unless there is a genuine medical need this operation should not be performed.

(c) LAI of sheep and goats - Restricted
This procedure should only be performed by a veterinarian or under the direct supervision of a veterinarian.

(d) SEC of sheep and deer - Restricted

(e) Tail docking of dogs - Prohibited

(f) Tail shortening of cows - Prohibited
The SPCA is of the opinion that the tail docking of dairy cattle is completely unnecessary for animal welfare standards. The current Code of Welfare even suggests that the procedure be carried out for the purposes of “...improving comfort for milking personal and enhancing milking efficiency”. Given that it is still common place in New Zealand for the procedure to be carried out incorrectly with excessively short tails decreasing the ability of cows to dissuade flies from the anal region we submit that this procedure be prohibited.
(g) Desexing companion animals - Significant
We would expect that the use of appropriate anaesthetic and post operative pain relief would be regulated for this procedure.

(h) Desexing (horse / alpaca) - Significant
We would expect that the use of appropriate anaesthetic and post operative pain relief would be regulated for this procedure.

(i) Tooth extraction - Restricted
There needs to be a clarification here as to the purpose of the procedure. If the procedure is for medical reasons then we submit that its classification should be significant, however if the purpose is for farm management whereby less intrusive alternatives are available then we submit that it be a restricted practice.

(j) Liver biopsy - Restricted
The SPCA does not agree with the need for this procedure to determine the heath of an animal.

(k) Dew claw (canine) – Restricted

(l) Caslick’s procedure - Restricted
This procedure involves deliberate surgical incisions made in an area of the animal which is both highly sensitive and prone to infection3. For this reason it should only be performed by a veterinarian or under the direct supervision of a veterinarian with appropriate pain relief.

(m) Dubbing - Prohibited
The SPCA believes that aggression amongst poultry can and should be managed in non invasive and more holistic manner.

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(n) In field castration of juvenile animals - Restricted
The SPCA is of the opinion that any castration of an animal involving surgery or an incision of any kind is performed by a veterinarian or under the direct supervision of a veterinarian and with appropriate pain relief.

39. The SPCA would also like to submit that the government take this opportunity to address other painful procedures that are routinely carried out in New Zealand submitting that the below procedures should also be classified as follows:

(a) Debarking of a dog - Restricted
We believe this procedure should remain restricted and only be performed when it is absolutely necessary for the welfare of the animal.

(b) Declawing a cat - Prohibited
The SPCA strongly submits that this procedure be prohibited. We are aware of no valid reason other than for human convenience as to why this procedure should be carried out.

(c) Dehorning & disbudding - Restricted
These procedures are currently managed within the Animal Welfare (Painful Husbandry Procedures) Code of Welfare. The SPCA submits that they are transferred into the proposed regulatory scheme and mandated as restricted procedures. According to NAWAC the procedures involve the "removal of living tissue and cause significant pain" and further that "both procedures require skill and the animals should receive adequate pain management". Currently there is no clear requirement to use analgesia and we submit that, given the acceptance of significant levels of pain, animal welfare requirements are not currently being met.

(d) Develveting - Restricted
This procedure is currently a controlled surgical procedure under the Act, meaning it can be performed by non veterinarians so long as they have approval in writing from a veterinarian to do so. Given that the procedure is likened to the amputation of a finger\(^{6}\), the SPCA believe it is imperative to ensure that appropriate analgesia is provided to the animal at all times.

(e) Tail docking (lamb / sheep) - Restricted
Given that Federated farmers president Bruce Wills has been quoted as saying "...[undocked] sheep perform better, have fewer dags, less fly strike and better muscle in the rear\(^{6}\), and further that prolapses in ewes are less common in undocked sheep due to better muscle tone, we can see no reason why the practice should not be more severely restricted. The procedure is clearly a painful one and the removal of the tail is defined in the current Code of Welfare as "significant" for the animal and one we believe should only be performed when the animal is afforded the appropriate analgesia.

(f) Tusk trimming (Boars) - Restricted
The current Code of Welfare for Pigs omits to provide any sort of minimum standard for this procedure. Given this fact the SPCA believe that the new regulatory regime should stipulate that this practice only be carried out with the use of appropriate pain relief and by appropriate method such as the use of a suitably placed embroitomy wire.

\(^{6}\) [http://www.stuff.co.nz/waikato-times/farming/7127208/Federated-Farmers-boss-a-non-docker]
"Federated Farmers boss a non-docker" 19/06/2012
Reporting Animals Killed for Research, Testing and Teaching

40. It is the overarching view of the SPCA that the use of animals in research, testing and teaching (RTT) is a practice that must be phased out and replaced with non animal models. However we recognise the difficulty in achieving this target and therefore support the use of the “3R’s” concept as laid out in s80 (2) (b) of the Act.

41. We are in agreement with the National Animal Ethics Advisory Committee (NAEC) that the current method used to gather statistical data, whereby animals killed for RTT are not included in the numbers, provides an inadequate and incomplete picture of the situation. As alluded to in the document the issue at the time of drafting was around a perceived “moral judgment” having to be made should these animals be included in the statistics. The SPCA is of the opinion that all decisions with regard to the harming or killing of animals involve, to a greater or lesser extent, the making of a moral judgement. We would point to section 3.2 of the document where the Ministry itself points to the compassionate treatment of animals as being a “human value”.

42. As mandated in s80 (2) it is a requirement for any person or institution using animals for RTT to afford the animals in their care a level of humane treatment as far as is practicable. Currently the Act requires data to be recorded about those animals when they are used in RTT but not those animals which are killed for RTT. The SPCA is concerned therefore that there can be no audit of the methods used to kill those animals so as to ensure such killing is being performed in the most humane manner.

43. We therefore disagree with the proposal to exempt statistics gathered on animals killed for RTT from the second “harm benefit” test. Our reason for this is that it is the specified intention of the Act, namely at s80 (2) (b), to attempt to reduce,
refine and eventually replace animals used in RTT with non
animal alternatives. If it is accepted then that animal life has a
value, which the document certainly speaks to by referring to
New Zealanders’ “passion for animals”, the fact that “it matters
to animals and it matters to us” et al, then it should not be
expected that the killing of an animal be carried out with no
beneficial outcome. We strongly submit that both of the tests
required by s60 (1) continue to be applied to all animals used in
RTT and those killed for RTT.

44. Recording and regulating this practice will oblige institutions to
ensure that the reasons for the killing are sound and open to
examination as well as providing incentive to ensure their staff
are adequately trained and the killing methods are controlled.
We are of the understanding that some institutions in New
Zealand are already actively monitoring and recording the
animals they kill for RTT including those killed for tissue
collection. The SPCA applauds this proactive step and submits
that the practice of recording data for all animals killed for RTT,
including for tissue collection, be mandated in the Act.
Furthermore we believe that the data which is collected should
be used to enable Animal Ethics Committees (AEC) and NAEC
to more accurately ascertain where real reductions in animal
numbers can best be made and to affect these changes.

45. In addition to the above submissions the SPCA would seek the
following improvements in the area of animal’s use in RTT.

46. Firstly we are of the opinion that at the time of initial drafting, the
ability to genetically modify or manipulate early stage embryos
was not considered relevant when creating the definition of
“animal” as it relates to mammalian foetuses or pre-hatched
avian or reptilian young. With the exponential increase in the
sophistication of scientific techniques that have occurred in the
12 years since the Act was first drafted the genetic manipulation
of early stage embryos is becoming more and more
commonplace. Although we accept that these early stage
embryos most likely lack any real sense of sentience, the manipulations performed upon them continue to impact the embryo as it moves into the second half of gestation and then into neonatal life.

47. We therefore submit that the definition of “animal” in section 2 of the Act be broadened to include early stage embryos, or as an alternative, that early stage embryos have a specific inclusion in Part 6 of the Act.

48. Secondly, the SPCA believes that the implementation of the “3R’s” model to refine, reduce and replace animals in RTT is a well intentioned one, but one that is not being practiced to the desired level by Animal Ethics Committees (AEC). We believe that it must be a requirement of all researchers performing RTT on animals that they provide a full justification on all experiments where non animal models are excluded due to “practicality” or “unavailability”. It should be the goal of AEC to promote non animal models wherever possible and we believe there needs to be more disclosure as to why this is not happening wherever possible.

49. The SPCA is also concerned with the lack of publication as to the results of experiments under the justification of “commercial sensitivity”. This lack of disclosure often results in experiments being duplicated as the data obtained from prior experiments with the same goal is not shared or able to be referenced. We therefore submit that results from experiments involving animals under Part 6 be made publicly available.

50. With regard to the Refinement criteria the SPCA is of the view that the current guidelines contained in section 6.4 of the Good Practice Guide for the use of Animals in Research, Testing and Teaching should be made mandatory. We point specifically to s6.4.1 where the following is stated:
"If animals develop signs of severe pain or distress despite the precautions outlined above, they should have the pain or distress alleviated promptly or must be killed humanely and without delay. Veterinary consultants involved in the animal care programme should be informed immediately. Alleviation of such pain or distress takes precedence over continuing or finishing the experiment. If in doubt, investigators must always seek a professional veterinary opinion before continuing an experiment."\(^7\)

51. The SPCA is of the belief that the current review and the proposed move to regulate animal welfare standards provides the perfect opportunity for the government to fill the void that has been created by a lack of any Code of Welfare in this area, and transfer a substantial amount of this guideline document into enforceable regulations.

52. The SPCA further submit that the LD50 test be banned and that other experiments with lethal end points be prohibited if there are methods of achieving the same result with non lethal endpoints. The UK has already begun to phase out this antiquated test and we submit that New Zealand should take further steps to lead animal welfare in this area.\(^8\)

**Enforcement Tools**

53. The SPCA is in agreement with the need for a wider range of enforcement tools for its inspectors to utilise in the field. As the proposal document correctly points out there are many instances where low to medium level offending is encountered, sometimes on a recidivist basis, yet where a prosecution through the courts is not the most viable option.

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54. As it currently stands inspectors are limited, in these instances, to a verbal or written warning issued to those persons who have failed in their duty of care toward an animal. Oftentimes these warnings are met with outright disdain by offenders or blatantly ignored. The ability to use the issuance of a fine as an incentive to comply would add greatly to the ability for inspectors to improve animal welfare in New Zealand.

55. The SPCA is therefore in agreement with the proposal to introduce new infringement offences and to increase the maximum fine from $200 to $1,000.

56. We would however like to submit that the consultation process planned to take place once the Act is amended be a comprehensive and conscientious one which involves SPCA input. We do not want to see the diluting down of offences due to the inclusion of an infringable component, and care will need to be taken to ensure the most appropriate offences are linked to this proposal.

57. It is worth pointing out at this juncture that the vast majority of the work conducted by SPCA inspectors is in urban or semi rural areas and involves either domesticated companion animals or small scale production systems. The indication in the proposal is to tie the infringement offences directly to the new regulations and we are concerned that this may limit too severely the situations in which infringement offences can be utilised.

III – Treatment Offences to Apply to Animals in the Wild

58. It is the SPCA’s enduring view that all animals in New Zealand should be afforded protection from unreasonable and unnecessary pain and distress. At the current time millions of animals are denied this or any level of protection from what amounts to extreme levels of suffering due to the ambiguity of the application of the Act to animals in a wild state.
59. We acknowledge the inclusion in the proposal document of an admission that the current wording and structure of the Act make it doubtful that animals in a wild state are free from widespread ill treatment. We further acknowledge the intent to try and remedy this but feel the proposal falls short of what is required.

60. The government's reluctance to restrict hunting and fishing activities is understandable but should not prevent it from seeking to discharge its duties as intended by the Act of prohibiting certain types of behaviour, in other words unreasonably or unnecessarily painful or distressful behaviour, toward all animals in New Zealand. Clearly at the current time the Act imbues no protection whatsoever on wild animals and this is simply unacceptable.

61. The reasons for this are twofold. Firstly is a commonly held misconception that section 175 exempts all wild animals from the protection afforded them under the Act. This potentially results in unreasonable acts performed against wild animals not receiving the same level of response or investigation as similar acts committed against domestic or production animals.

62. Secondly the interpretation in s2 of the terms "hunting and killing" as they apply to s175 provide an approach that is far too broad for the purposes of the Act, which is to provide for the welfare of individual animals.⁹

**hunt or kill**, in relation to animals, includes—

- (a) hunting, fishing, or searching for any animal and killing, taking, catching, trapping, capturing, tranquilising, or immobilising any animal by any means:

- (b) pursuing or disturbing any animal;—

and **hunting or killing** has a corresponding meaning

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63. The problem relates to the breadth of conduct apparently covered by this definition. It may have been the intent of parliament to ensure that "legitimate" acts of hunting and fishing are not suddenly brought before the courts, and this is understandable, but the breadth of the wording effectively acts to confuse both investigators as well as those committing the harm as to which type of ill treatment is permissible. The SPCA believes this is an important point as the ambiguity around what type of conduct is permitted is unfair to both the animals and the public at large. The Animal Welfare Act should provide a clear outline to the public of what conduct is permissible when animals are being hunted or killed in a wild state as it provides for quite severe criminal sanctions of up to five years imprisonment should a person be convicted of ill treatment of a wild animal.¹⁰

64. As far back as 1999 when Pete Hodgson’s Private Members Bill was undergoing its third reading, that member said to the house that "...within 10 years someone will note that there are issues concerning hunting and fishing that ought to have been addressed by codes of conduct but have not been addressed by them"¹¹. The SPCA urges the government to take the opportunity finally provided to it by this review of the Act to ensure that what is perhaps the Act’s biggest weakness is remedied comprehensively and clearly.

65. The SPCA submits that the current proposal to "prevent extreme conduct that goes beyond acceptable practice" is too vague and will not suffice to adequately clarify the ambiguities discussed above. Instead we would submit that there is a need to explicitly mandate the need for reasonableness to be invoked when hunting or killing any animal in a wild state. This could be most easily achieved by amending the current wording of s175 to add the phrase,

"...so long as the hunting or killing was undertaken in a reasonable manner, taking into account the method utilised to hunt or kill the animal and the steps taken to reduce any unnecessary pain or suffering."^{2}

to the end of the section. This would have the effect of allowing investigators to assess the appropriateness of the actions and take action where necessary.

66. Our Australian neighbours have chosen the option of regulating the practice of hunting and have included such requirements as the New South Wales Code of Practice for Licensed Game Hunters:

5 Obligation to avoid suffering
An animal being hunted must not be inflicted with unnecessary pain. To achieve the aim of delivering a humane death to the hunted animal:
(a) it must be targeted so that a humane kill is likely, and
(b) it must be shot within the reasonably accepted killing range of the firearm and ammunition or bow being used, and
(c) the firearm and ammunition, bow and arrow, or other thing used must be such as can reasonably be expected to humanely kill an animal of the target species.

6 Lactating females with dependent young
If a lactating female is killed, every reasonable effort must be made to locate and humanely kill any dependent young.

7 Wounded animals
If an animal is wounded, the hunter must take all reasonable steps to locate it, so that it can be killed quickly and humanely.

67. Should the government chose the regulatory option as it intends to do with the current Codes of Welfare this would be a


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satisfactory way to set out which methodology and techniques are acceptable for specific types of hunting.

68. During one of the workshops held by the Ministry a point was raised by representatives of the Animal Health Board around large scale pest control operations conducted by government agencies and their concern that any change to the legislation may be detrimental to the efficient control of introduced predator species. The SPCA would suggest that if this is an area which might hold back any clear introduction of a requirement for reasonable conduct with regard to wild animals that there could be a decoupling of recreational hunting and fishing from state sanctioned pest control. The former would be required to be undertaken in a reasonable manner whilst the latter would be exempt from this compulsion unless the methods used were demonstrably unreasonable and resulted in extreme suffering.\(^{13}\)

69. Finally it is our position that some particular types of hunting that currently occur in New Zealand represent such a high level of suffering and distress to the animals involved that they require the government to take a prohibitory stance in order to prevent the unjustifiable treatment that currently exists. The use of dogs to hunt and "bail up" wild pigs is one of these methods which causes such high levels of pain and distress to the individual animals involved, often for extended periods and with no assistance able to be afforded the animal due to the separation of dogs and hunter, that the SPCA believe its continued practice is unjustifiable. We submit that alongside the proposed amendments suggested above the government repeals section 31(2) (b) from the Act.

70. The SPCA also takes this opportunity to seek a prohibition on the practice of hunting animals from a helicopter, commonly referred to as "Heli-Hunting". It is our understanding that Peter Dunne MP has entered into this process already and we feel

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that this review is an ideal opportunity with which to finalise this process.

71. Furthermore the SPCA submit that inline with the intent of introducing an obligation of "reasonableness" into the acts of hunting and fishing that the practice of shark finning, which currently occurs in New Zealand waters in direct contravention of the Act, be expressly prohibited. We do not feel that there is any justification for the continuation of this barbaric practice and believe all of New Zealand would support such a move.

Other Technical Amendments

72. The SPCA would like to express its support for the technical amendments suggested in the proposal. However we would also submit that the government take this opportunity to address several other areas where implementation of the Act in the day to day running of inspectorates and approved organisations has been troubled and requires some minor changes in order to facilitate improved animal welfare practices.

Duties of Approved Organisation

73. Section 141 is the most critical component of the Act for approved organisations who take sick, injured, lost and stray animals in from the community. The intent of the section is to empower approved organisations to take into their custody animals which to one extent or another have no known owner. These animals are then required to be held by the organisation for a minimum of seven days at which point they become the property of that organisation.

Subsection 2(b) provides the ability for the organisation to:
• at any time, in any case where the animal is diseased or is suspected of being diseased and the inspector or auxiliary officer has reasonable grounds to believe that the welfare of other animals in the custody of the approved organisation would be compromised if the organisation were to continue to hold that animal in custody,—
  • (i) sell the animal; or
  • (ii) find a home for the animal; or
  • (iii) destroy or otherwise dispose of the animal in such manner as the inspector or auxiliary officer thinks fit

74. This section is critical to and used extensively by approved organisations to prevent animals that are injured or in ill health suffering unreasonably or compromising the health of other animals at the organisation whilst attempts are made to locate an owner. The SPCA would like a clarification here that one of the determinatives for employing paragraphs (i) through (iii) can also be one of potential welfare issues caused by caging wild or unsocialised animals.

75. Each year around the country thousands of animals, mainly felines but also a variety of small mammals, are taken in by approved organisations and attempts are made to locate a potential owner as required by s141. Some of these animals exhibit behaviour that is wild in temperament and strongly antisocial and which, when caged, suffer severe distress. As the legislation currently stands these animals must be held for the entire seven day period as they do not fit the criteria in s141(2)(b).

76. In order to mitigate these instances of suffering the SPCA submit that s141(2)(b) be amended to read as follows:

• at any time, in any case where the animal:
  • after being assessed by an inspector, veterinarian or auxiliary officer is deemed to be suffering unreasonably due to continued confinement; or,


- is diseased or is suspected of being diseased and the inspector or auxiliary officer has reasonable grounds to believe that the welfare of other animals in the custody of the approved organisation would be compromised if the organisation were to continue to hold that animal in custody.—
- (i) sell the animal; or
- (ii) find a home for the animal; or
- (iii) destroy or otherwise dispose of the animal in such manner as the Inspector or auxiliary officer thinks fit

This amendment would have the effect of allowing an inspector, auxiliary officer or veterinarian to prevent any continued suffering arising from the forced containment of a wild or unsocialised animal handed to it by a person other than the owner of an animal.

77. A further issue that has come to light since the commencement of the Act involves the welfare of the ever increasing number of animals that are accepted into the custody of approved organisations with the knowledge of the owner, but where that owner is temporarily unable to care for that animal. These situations normally take the form of and are increasing due to the improved interagency cooperation between the SPCA and agencies such as Women's Refuge, Mental Health Services, or Homeless Shelters.

78. The issue is one of an agency, namely an approved organisation, attempting to assist fellow community agencies such as those listed above by taking temporary custody of an animal for a limited period of time in order to facilitate the health or wellbeing needs of person who is under the care of that agency. In the majority of cases this is resolved with the animal being collected within the agreed timeframe, but occasionally for a variety of reasons, the owner fails to collect their animal and is unable to or refuses to be contacted. In these situations the animal’s welfare is compromised by extended confinement in a cage as prolonged efforts are made to resolve the situation.
79. The SPCA would submit that a minor amendment to s141 allowing for animals in these situations to be applicable to that section be added. We suggest the following:

141 Duties of approved organisation

- (1) Where a person (other than an owner relinquishing ownership) gives that animal into the custody of an approved organisation and that approved organisation accepts custody of that animal, or where an approved organisation takes any animal into its custody, that approved organisation-

This would allow for an approved organisation to provide the owner with written notice that they must collect their animal within seven days from receipt of that notice should the owner fail to collect the animal at the agreed time.

Animals at Imminent Risk of Harm

80. Currently inspectors executing their powers under s127 and wishing to remove an animal under s127(5) must have reasonable grounds to believe that the either the animal is being wilfully ill – treated or that its physical, health and behavioural needs, or the need for veterinary treatment, make it desirable for it to be removed from the property. This wording lends itself toward abuse or neglect which is historic to or concurrent with the inspector’s presence on the scene.

81. With the ever increasing research data that suggests strong and actual links between animal abuse and violence toward people the SPCA is proactively working to assist victims of domestic violence by removing at risk animals from abusive situations. This action can often assist victims of domestic violence to finally leave the home to find help knowing that their pets are safe. Incidents involving threats to harm or kill animals in a
domestic situation are increasing. The current wording of this section is acting as an impediment in such situations as a lack of evidence of harm having occurred means inspectors are unable to remove animals which they believe to be at risk of future harm.

82. In order to clarify that action is able to be taken in situations where threats of harm have been made to an animal, and thereby help facilitate the removal of at risk animals, and subsequently at risk persons, from abusive situations the SPCA submit that s127(5) be amended to read:

Where an inspector who exercises a power of entry under subsection (1) has reasonable grounds to believe, in respect of any animal found on or in the land, premises, or place or in or on the vehicle, aircraft, or ship, that—

the animal has been wilfully ill-treated contrary to section 28; or

there is a clear risk of imminent harm to that animal; or

the physical, health, and behavioural needs of the animal or the need for the animal to receive treatment from a veterinarian make it necessary or desirable to remove the animal from the land, premises, or place or the vehicle, aircraft, or ship,—

the inspector may take and maintain possession of the animal, by force if necessary, and convey the animal to another place.

Destruction of Injured or Sick Animals (other than marine mammals)

83. This provision is used where an inspector, auxiliary officer or veterinarian finds an animal that is so severely injured or sick that in his or her opinion that animal will not respond to reasonable treatment and should be destroyed. There is however a requirement for the inspector, auxiliary officer or veterinarian to attempt to locate an owner in a reasonable time
and, if requested, allow for that owner to seek a second veterinary opinion on the matter.

84. It is common, where an animal is collected or found by an inspector or auxiliary officer, for that animal to also be seen by an attending veterinarian for initial treatment, and, for that veterinarian to have come to an opinion as to whether the animal will respond to reasonable treatment or not before the owner is contacted. The SPCA believe the intent of this section was to provide for an owner of an animal to seek a second opinion as to the state of health of an animal above and beyond the initial opinion of an inspector or auxiliary officer, not a veterinarian.

85. Effectively what occurs at present is that an opinion is formed by an inspector (or auxiliary officer) as well as an initial veterinarian. The wording of the section as it stands seems to oblige the inspector or veterinarian to allow the owner to seek a further veterinary opinion.

86. In these situations, when a second opinion is sought by the owner and that veterinary opinion is in conflict with the opinion of the initial veterinarian (and on occasion the inspector or auxiliary officer), the wording of the section makes it unclear as to what is to happen next.

87. The SPCA submits that s138 be amended to make it clear that the option for an owner to seek a second opinion from a veterinarian only apply in cases where the animal has not already been seen by a veterinarian. As a secondary option we would submit that where two conflicting veterinary opinions are received s138 have an additional subsection added so that the inspector or auxiliary officer has the authority to decide on the best course of action as he or she sees fit for the animal.
Disposal of Things Seized

88. Inspectors from both the SPCA and MPI on occasion find themselves dealing with situations where animals have been deserted by the owner or person in charge, or the owner or person in charge cannot be located. In these situations the animals may not have been seized under sections 127 or 131 and therefore can not be disposed of pursuant to section 136 of the Act.

89. The reason for non-seizure may include such factors as the large number of animals, the logistical impossibility of physical seizure or the reluctance for the agency to subsequently incur the cost of providing care for the animal/s.

90. To ease the mitigation of suffering in these circumstances the SPCA submit that s136 be amended to allow for a hearing to be held in situations where animals have not been seized but have either been deserted or prolonged attempts have failed to locate an owner or person in charge. The objective of such a hearing would be to allow for the welfare of the subject animals to be maintained in a timely and efficient manner and would not be dependent on a prosecutorial hearing taking place.

Strict Liability

91. It is the opinion of the SPCA that the creation of particular charges in the Act as Strict Liability has been of paramount importance in allowing inspectors to investigate and, where necessary, prosecute for breaches of the legislation. This type of charge allows for a level of clarity when dealing with offending and provides for the inspector to advise the person that they
must or must not do something without having to consider intent or levels of excuse.

92. For this reason the SPCA would submit that the following sections also be made Strict Liability offences: Sections 14, 21, 22, 23, 24, 34 and 35.

Further Offences to be Included

93. The SPCA would like to offer its support for the proposed inclusion of an offence to drown or attempting to drown any animal, including an animal in a wild state. Although prosecutions are able to be taken in most cases where animals are killed via this method, any attempt at explicitly prohibiting an inhumane method of treatment results in facilitating easier investigation, promoting public awareness and is fully supported by the SPCA.

94. We would also like to submit that the following offences be specifically addressed in the Act.

a. Animals as Fairground Prizes
We believe that the practice of giving away any type of animal as a prize, be that at a fair, carnival, competition or any other type of event is an outdated and inhumane practice. For this reason we request a prohibition on this practice.

b. Ban on Live Boiling of Crustaceans
The practice of boiling crustaceans alive is antiquated and causes unjustifiable pain and distress. The current Code of Welfare for Commercial Slaughter currently mandates that crabs, rock lobsters and crayfish be stunned or otherwise rendered insensible before they are killed, however it restricts this requirement to seafood processing premises, commercial fishing vessels, seafood shops and restaurants.
The SPCA would submit that this practice also be prohibited in any other situation including domestic households.

c. **Snare Traps to be Prohibited**

The SPCA is opposed to the use of snares. Snares do not operate humanely either as restraining or killing traps and are unlikely to meet reasonable animal welfare standards. We urge the government to explicitly prohibit the use of these devices in New Zealand as is the case in many European Countries. The SPCA will also address this point in a separate submission.

**Statements in Support**

95. The SPCA would like to take this opportunity to pledge our support for the following submissions made by fellow animal welfare agencies.

a. The World Society for the Protection of Animals (WSPA) has made a submission for the inclusion of the term “sentience” into the Long Title of the Act. We would support this amendment.

b. The National Animal Welfare Emergency Management (NAWEM) Advisory Group has made a submission for amendments to the Act to “ensure contingency planning for and responses to adverse events”. We support such an amendment.

**Summary**

96. In closing the SPCA would like to remind the government that the vast majority of New Zealand citizens view animal cruelty and neglect, be it on a domestic or commercial level, with the utmost abhorrence and rightly expect the state to lead the way in modifying behaviour and improving industry practice.
97. The Animal Welfare Act 1999 provided a good start and, for a time, placed New Zealand at the leading edge of animal welfare legislation. This is no longer the case. In order to maintain our reputation as a responsible agricultural producer, and in order to meet our changing societal expectations the SPCA urges the government to take the appropriate steps forward as suggested in this document.

Signed and dated this day the 27th September 2012

[On behalf of the Royal New Zealand Society for the Prevention of Cruelty to Animals]
From:  
Sent: Wednesday, 26 September 2012 4:12 p.m.  
To: Animal Welfare Submissions  
Subject: SAFE submission  
Attachments: SAFE Final Submissions on AWA Review.docx; SAFE Interim Submission on AWA 19 June.pdf

Review of the Animal Welfare Act

I enclose, on behalf of SAFE, a submission on the review of the Animal Welfare Act 1999. Also enclosed is an earlier interim submission that was presented to MPI on 19 June 2012. The two submissions need to be read together.

I would appreciate acknowledgement of receipt of these submissions.

Yours faithfully

SAFE
Executive Director
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SAFE is an Incorporated Society registered as a national body under the name Save Animals From Exploitation founded in 1932.
REVIEW OF ANIMAL WELFARE ACT 1999

FINAL SUBMISSIONS ON BEHALF OF SAFE

Dated 25 September 2012
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Proposal to add “practicality” and “economic impact” to the set of criteria for developing animal welfare standards

1. Currently s 73 sets out the matters to be considered by NAWAC, as follows:

"73 Matters to be considered
(1) The National Animal Welfare Advisory Committee must, in considering the content of a draft code of welfare, and before deciding whether to recommend to the Minister the issue of that code, --
   (a) be satisfied that the proposed standards are the minimum necessary to ensure that the purposes of this Act will be met; and
   (b) be satisfied that the recommendations for best practice (if any) are appropriate.
(2) In carrying out its functions under subsection (1), the National Animal Welfare Advisory Committee must have regard to --
   (a) the submissions made under section 71 and the consultations undertaken by the Committee; and
   (b) good practice and scientific knowledge in relation to the management of the animals to which the code relates; and
   (c) available technology; and
   (d) any other matters considered relevant by the National Animal Welfare Advisory Committee.
(3) Despite subsection (1), the National Animal Welfare Advisory Committee may, in exceptional circumstances, recommend minimum standards and recommendations for best practice that do not fully meet --
   (a) the obligations of section 10 or section 11; or
   (b) the obligations that a person would need to observe in the treatment, transport, or killing of animals if that person were to avoid committing an offence against section 12(c) or section 21(1)(b) or section 22(2) or section 23(1) or section 23(2) or section 29(a).
(4) The National Animal Welfare Advisory Committee must, in making recommendations under subsection (3), have regard to --
   (a) the feasibility and practicality of effecting a transition from current practices to new practices and any adverse effects that may result from such a transition:
   (b) the requirements of religious practices or cultural practices or both:
   (c) the economic effects of any transition from current practices to new practices."
2. It is understood that the proposal is to add “practicality” and “economic impact” as mandatory criteria additional to those currently set out in s 73(2)(b), (c) and (d), presumably in a new provision replacing s 73 that will govern the content of welfare standards in regulations. MPI asserts that this will improve transparency by making explicit matters that NAWAC already takes into account. SAFE considers that the proposed change is far more significant than MPI suggests, and strongly opposes this proposal, for the following reasons:

(a) At present, the express mandatory criteria – which must be taken into account by NAWAC under s 73(2) in setting welfare standards, are:

- Submissions made by the public and consultation undertaken by NAWAC;

- good practice and scientific knowledge in relation to the management of the animals; and

- available technology.

NAWAC may also consider, as a matter of discretion, “any other matters considered relevant”. The discretion is not, as a matter of statutory interpretation and public law principle, unfettered. The additional factors must be relevant to and consistent with the statutory purposes and the statutory scheme. The statutory purposes include “attending properly to the welfare of animals” (s 9(1)) and requiring persons in charge of animals to take “all reasonable steps to ensure that the physical, health and behavoural needs of animals are met in accordance with both good practice and scientific knowledge” (s 9(2)(a)). The focus is on the welfare of animals.

(b) In its online Guidelines, NAWAC states that at present it also considers, pursuant to its discretion, the following additional factors: scientific understanding of animals’ needs, practical experience, practicality of making changes; international trends, public opinion, and economic implications for those concerned. It is submitted that, despite what is said in the Guidelines, on a proper interpretation of s 73, practicality and economic impact, are not relevant as ‘stand alone’ considerations under s 73(2). Ss 73(4)(a) and (c) expressly state that those factors are relevant to the “exceptional circumstances”
exemption. They are relevant to determining whether, in "exceptional circumstances", to permit standards that do not comply with certain obligations of the Act. They cannot also, of themselves, be relevant to the determination of those standards under s 73(2). Alternatively, they can at best be relevant under s 73(2) only insofar as (a) consistent with the stated criteria, such as "good practice" and "available technology", and (b) consistent with the statutory purposes of, inter alia, ensuring that the physical, health and behavioural needs of animals are met.

(c) It would be a very significant change, and a retrograde step inconsistent with the purposes of the Act, if "practicality" and "economic impact" were to be elevated to the status of express mandatory criteria in s 72(2). That would inevitably mean that in practice much more weight would be placed on those factors in setting standards. They would be accorded far greater significance. The current exception would become the rule. Indeed an "exceptional circumstances" provision might no longer even be needed if these factors became mandatory considerations for setting standards. It would inevitably lead to a dilution in the protections offered by the welfare standards and the Act.

(d) MPI has advised, during the recent workshop in Auckland, that it is not proposed to add the new criteria to the lists of relevant factors in either s 9(2)(a) (purpose provision) or s 10 (the obligations in relation to the physical, health and behavioural needs of animals). SAFE is concerned that if the proposed change is adopted then the change could also be carried through to the lists of factors in ss 9(2)(a) and 10. This would fundamentally erode the protections in the Act.

(e) In essence, SAFE regards this proposal as an unacceptable attempt to dampen down the criteria for welfare standards, and to alter those criteria to favour the interests of producers. This does not sit well within the current review of the Act which is intended to effect positive change for animals. MPI has stated in the workshop that the review is intended to "build on the existing foundations". The proposal does not do that. On the contrary it would undermine the existing foundations.
3. SAFE therefore recommends that the proposed criteria of "practicality" and "economic impact" not be added to the list of matters to be taken into account when setting animal welfare standards.

"Transitions" and "exemptions"

4. It is proposed, in paragraph 4.4.2 of the Discussion Paper, to replace the current "exceptional circumstances" provision in ss 73(3) and (4) with defined "transition periods" and with "exemptions" (for example, for a religious practice). SAFE would prefer an amendment to ss 73(3) and (4) to tighten up the existing "exceptional circumstances" provision as follows:

(a) The need for "exceptional circumstances" for any departure from the obligations of the Act – which must of course mean genuinely exceptional circumstances – should remain; and

(b) This should apply to non-compliance with any obligation in the Act. Thus, other than in "exceptional circumstances" all welfare standards must comply with all the obligations of the Act and non-complying practices must be immediately banned; and

(c) The criteria in ss 73(4)(b) -- religious and cultural practices -- should be repealed, for the reasons stated in paragraph 30(e)(ii) of SAFE's Interim Submission; and

(d) If the criteria in ss 73(4)(a) and (c) remain, it should be made very clear that those criteria must also meet the overriding standard of exceptional circumstances; and

(e) It should further be stated that the exceptional circumstances exemption may only be invoked for the purpose of specifying a period for transition from a current practice that does not comply with any obligation of the Act to a new complying practice. This phase out period should be required to be the shortest practicable period of time, and in any event no more than 5 years from the date the regulations are made. Refer SAFE's Interim Submission, paragraph 30(e).
Part 6 of the Act – use of animals in research, testing and teaching.

5. SAFE has made very detailed submissions on Part 6 of the Act [in paragraphs 51 to 63 of its attached Interim Submission]. As set out in detail in those submissions, there are a number of regulatory deficiencies in Part 6, including:

(a) insufficient safeguards to ensure independence at every stage of the regulatory ‘chain’ (paragraphs 56(a) to (d) and 63(a) and (b));

(b) inadequate resources and funding allocated to NAEAC (paragraphs 57 and 63(b));

(c) a lack of rigorous mandatory criteria for research proposals (paragraphs 58-60 and 63(c));

(d) lack of disclosure/accountability (paragraphs 61 and 63(d)); and

(e) insufficient monitoring/inspection (paragraph 62(a) to (d) and 63(f).

6. SAFE also agrees with the proposal in paragraph 4.8.2 of the Discussion Paper that animals killed humanely as part of research and testing or teaching on a dead animal or on prenatal or developmental tissue be included in the definition of “manipulation”. The numbers of animals killed in order to undertake research, testing and teaching should be included in official statistics. These statistics should also include the large numbers of animals killed for tissue collection. In addition, SAFE agrees with the suggestion made during the Auckland workshop that these numbers should also include the number of animals, for example surplus breeding stock, that are not used and are killed.

7. SAFE does not agree that the definition of manipulation should exempt researchers who kill an animal for research, testing and teaching purposes from needing to satisfy the second ‘harm-benefit’ test.

Standards of Care and Conduct Towards Animals

8. At paragraph 4.3.3 of the Discussion Document, the Government’s preferred proposal is stated as the ‘replacement of Codes of Welfare with a mix of regulations
and guidelines'. It is proposed that mandatory standards will be written as regulations and that these will be accompanied by voluntary guidelines.

9. Regulations have much to recommend them in that they are enforceable, quicker to develop than codes of welfare and strengthened by Cabinet approval, regulatory impact analysis, drafting by the Parliamentary Counsel Office and review by the Parliamentary Regulations Review Committee. However, the significance of oversight by the Regulations Review Committee may be overstated as they concluded in 2006 that the Layer Hen Code is inconsistent with the Act but the Minister, Jim Anderton, ignored their recommendation that it be re-drafted.

10. It is SAFE's concern that the separate process proposed to identify and 'refine' the current set of minimum standards into a set of mandatory standards suitable for regulations will eliminate all but the most rudimentary of protections.

11. A number of the protections of animal welfare as guaranteed in the 'five freedoms' part of the Act cannot be readily codified in regulations. Section 4 of the Animal Welfare Act 1999 sets out the definition of physical, health and behavioural needs as follows:

(a) proper and sufficient food and water:
(b) adequate shelter:
(c) opportunity to display normal patterns of behaviour:
(d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress:
(e) protection from, and rapid diagnosis of, any significant injury or disease,—

being a need which, in each case, is appropriate to the species, environment, and circumstances of the animal.

Although (a) and (b) and possibly (e) can be written as regulations, it is difficult to see how (c) the opportunity to display normal patterns of behaviour or (d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress can be fitted within regulations framed as generally as 'farmed animals', for instance.

12. It was suggested at the Auckland MPI consultation workshop that in the process of review outlined in paragraph 4.3.5 of the Discussion Document, only a small number of the current minimum standards would be considered suitable for conversion to regulations and that even in those cases, only some parts would be
regulations (a figure as low as 5% was mentioned) with the remainder being guidelines without legal effect.

13. It is also of concern that the starting point of the process for developing regulations or guidelines is set at the wrong place. If this process is to begin with the minimum standards currently allowed under s73(3) ‘exceptional circumstances’, they are permitted to be in contravention of sections 10, 11, 12(c), 21(1)(b), 22(2), 23(1), 23(2) and 29(a) of the Act.

14. Another issue with using the minimum standards as the basis of regulations is that they have been prone to industry capture and in many cases were drafted by the very industry bodies they are intended to regulate.

15. Although the minimum standards of codes of welfare as formulated under s 73(3) operated only as defences to a charge of ill-treatment, the status of guidelines as non-binding and hence not legally enforceable operates only to ‘preserve the information and guidance’ provided in codes of welfare with none of the, albeit minimal, legal effect that the codes provide.

16. SAFE submit that this will be a retrograde step as it appears a narrower band of conduct is likely to be captured in the regulations and the rules around animal welfare will fall into a binary of legally binding/non-binding. We suggest that it would be better to include specific schedules under the regulations outlining obligations to different species and regarding different practices.

Obligation to Consult

17. The obligation to consult on the development of regulations is stated as being developed with the ‘relevant sector’ in paragraph 4.3.3 of the Discussion Document and ‘industry or sector groups’. It is not clear that this will include animal advocacy organisations such as SAFE and it is submitted that non-industry groups must also be included in groups to be consulted as ‘those affected’.

Live Animal Exports
18. SAFE has outlined its position on the export of live animals for slaughter in its Interim Submission and would like to take this opportunity to once again submit for a total prohibition of this practice. We accept the proposals in paragraph 4.6 of the Discussion Document do suggest some amendments which have merit but we continue to be extremely concerned with the apparent indication given that live export for slaughter may continue to be an option for New Zealand.

19. As the document rightly points out, the current system of issuing certificates for export lacks any real impetuous or enforcement capability. Although the Director General may impose conditions on an Animal Welfare Export Certificate these conditions have no legal effect. Even with the proposed modification to allow for mandatory standards to be applied to Export Certificates we feel that the risk to both animal welfare and the reputation of New Zealand as a responsible exporter is unjustifiably high. The ability to regulate and maintain animal welfare once animals are aboard a vessel is severely reduced, almost to the point of non-existence. Due to its remote location any journey from New Zealand will inherently be a long and formidable one and the capacity to ensure that animal welfare remains at the levels mandated by the Animal Welfare Act cannot be guaranteed.

20. Indeed at the time of writing our neighbours in Australia are being confronted with the stark reality of just such a situation. The MV Ocean Drover with its load of 22,000 live sheep has been forced to remain at sea in the Persian Gulf where temperatures reach 40 degrees Celsius for a fortnight longer than expected. This is in addition to its 33 day journey from Australia and the ship still appears not to have a dock available at which to unload its cargo.\(^1\) This event is just one in a long line of similar experiences demonstrating that even after considerable governmental consideration of regulations around the issue of live export, and the introduction of so-called tougher procedures and memorandums of understanding, animals continue to suffer unnecessarily via this practice.

21. In support of this assertion SAFE would point to a recent speech made by The Honourable Michael Kirby, recently retired judge of the High Court of Australia. Directing his substantial legal and administrative knowledge toward the subject of live animal exports from Australia he categorically denounced the way in which the government of Australia’s attempts to regulate the trade in live animals have proven

\(^1\) Al Jazeera, “Australian Sheep Stranded in Gulf”, 4 September 2012  
unenforceable and have failed to offer any protection at all, to the detriment of the
animals themselves and the country of Australia as a whole. He calls for an
immediate ban on the practice and further states: "There is nothing more powerful
than an idea whose time has come...live export is where Australia should assert its
standards."2

22. The failure of the Australian example should act as a warning beacon that it is near
impossible to regulate for such occurrences as adverse weather or the changeable
quarantine practices of foreign ports, and accordingly it is near impossible to ensure
the animals on board are afforded the level of protection our legislation prescribes.

23. This level of difficulty transfers itself to the treatment of the animals once they reach
their intended destination. As subjects of the Animal Welfare Act the animals on
these ships leave our shores with a level of protection that is enshrined in law.
SAFE firmly believe that the government's obligation to maintain this level of
protection does not stop when we board these animals for destinations beyond our
borders.

24. Therefore SAFE is seeking for the government to take the opportunity that this
review provides to commit to a prohibition of the export of live animals for slaughter
from this country.

Significant Surgical Procedures

25. As expressed in paragraph 37 of our Interim Submission SAFE are concerned that
insufficient use has been made of the powers conferred on NAWAC and the
Minister under s16 of the Act to classify painful husbandry procedures as significant
and therefore provide protection for the animals in receipt of these procedures. It is
our strong belief that in a modern progressive country such as New Zealand the
requirement to afford animals the benefits of anaesthetic or analgesia whilst any
form of painful procedure is carried out should be considered as a minimum
requirement. In order to adequately provide for this level of humane practice it is our
belief that operations involving manipulation, removal or surgical interaction with

2 Hon Michael Kirby, "Op Ed for Voiceless: The animal protection institute", Michael Kirby website,
ED-VOICELESS-AUGUST-2011.pdf>
animals must be carried out either by a veterinarian or under the direct supervision of a veterinarian.

26. SAFE has no issue with the proposal to allow for overseas qualified veterinarians or New Zealand registered veterinarians who are seeking practical experience before applying or reapplying for a practicing certificate to perform significant procedures under the direct supervision of a veterinarian. We do however have grave concerns over the proposal to allow for “skilled technicians” to carry out some controlled procedures. Were the government to go ahead with this proposal it would be broadening the number of people able to perform quite severe husbandry practices on animals.

27. It is our position that any act carried out on an animal that would otherwise leave the operator in breach of s 28 or s 29 of the Act should not be carried out unless done so by a veterinarian or under the direct supervision of a veterinarian and the animal is afforded the appropriate level of pain relief. It would also be our expectation that procedures classified as significant and therefore only able to be carried out by veterinarians would be done so to a professionally competent level with the use of anaesthetic and analgesia as and when necessary. Furthermore we submit that any practices that cause undue suffering with no commensurate welfare benefits be prohibited entirely.

28. With reference to the indicator levels provided in the document SAFE submit that the following procedures be classified accordingly:

(a) Mulesing - Prohibited
   This procedure is both inhumane and unnecessary. As the industry itself has indicated that it no longer intends to perform this practice SAFE suggests that this is the ideal time to prohibit it.

(b) Tail docking of horses - Prohibited
   Unless there is a genuine medical need this operation should not be performed.

(c) LAI of sheep, deer and goats - Restricted
   This procedure should only be performed by a veterinarian or under the direct supervision of a veterinarian.

(d) SEC of sheep and deer - Restricted

(e) Tail docking of dogs - Prohibited

(f) Tail shortening of cows - Prohibited
SAFE are of the opinion that the tail docking of dairy cattle is completely unnecessary for animal welfare standards. The current Code of Welfare even suggests that the procedure be carried out for the purposes of “...improving comfort for milking personal and enhancing milking efficiency”. Given that it is still common place in New Zealand for the procedure to be carried out incorrectly with excessively short tails decreasing the ability of cows to dissuade flies from the anal region SAFE submit that this procedure be prohibited.

(g) Desexing companion animals - Significant
SAFE would expect that the use of appropriate anaesthetic and post operative pain relief would be regulated for this procedure.

(h) Desexing (horse /alpaca) - Significant
SAFE would expect that the use of appropriate anaesthetic and post operative pain relief would be regulated for this procedure

(i) Tooth extraction - Restricted
There needs to be a clarification here as to the purpose of the procedure. If the procedure is for medical reasons then we submit that its classification should be significant, however if the purpose is for farm management whereby less intrusive alternatives are available then we submit that it be a restricted practice.

(j) Liver biopsy - Restricted
SAFE do not agree with the need for this procedure to determine the heath of an animal.

(k) Dew claw (canine) - Restricted

(l) Caslick’s procedure - Restricted
This procedure involves deliberate surgical incisions made in an area of the animal which is both highly sensitive and prone to infection\(^3\). For this reason it should only be performed by a veterinarian or under the direct supervision of a veterinarian with appropriate pain relief.

(m) Dubbing - Prohibited
SAFE believe that aggression amongst poultry can and should be managed in non invasive and more holistic manner.

(n) In field castration of juvenile animals - Restricted

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SAFE strongly submit that any castration of an animal that involves surgery or an incision of any kind is performed by a veterinarian or under the direct supervision of a veterinarian and with appropriate pain relief.

29. SAFE would also like to submit that the government take this opportunity to address other painful procedures that are routinely carried out in New Zealand submitting that the below procedures should also be classified as follows:

(a) Debarking of a dog - Restricted
SAFE believe this procedure should remain restricted and only be performed when it is absolutely necessary for the welfare of the animal.

(b) Declawing a cat - Prohibited
SAFE strongly submit that this procedure be prohibited. We are aware of no valid reason other than for human convenience as to why this procedure should be carried out.

(c) Dehorning & disbudding - Restricted
These procedures are currently managed within the Animal Welfare (Painful Husbandry Procedures) Code of welfare. SAFE submits that they are transferred into the proposed regulatory scheme and mandated as restricted procedures. According to NAWAC the procedures involve the “removal of living tissue and cause significant pain” and further that “both procedures require skill and the animals should receive adequate pain management”. Currently there is no clear requirement to use analgesia and SAFE believe, given the acceptance of significant levels of pain, animal welfare requirements are not currently being met.

(d) Develvetting - Restricted
This procedure is currently a controlled surgical procedure under the Act, meaning it can be performed by non veterinarians so long as they have approval in writing from a veterinarian to do so. Given that the procedure is likened to the amputation of a finger, SAFE believe it is imperative to ensure that appropriate analgesia is provided to the animal at all times.

(e) Tail docking (lamb / sheep) - Restricted

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Given that Federated farmers president Bruce Wills has been quoted as saying "...[undocked] sheep perform better, have fewer dags, less fly strike and better muscle in the rear", and further that prolapses in ewes are less common in undocked sheep due to better muscle tone, SAFE can see no reason why the practice should not be more severely restricted. The procedure is clearly a painful one and the removal of the tail is defined in the current Code of Welfare as “significant” for the animal and one we believe should only be performed when the animal is afforded the appropriate analgesia.

(f) Induced moulting of poultry - Prohibited

(g) Induction of dairy cows – Prohibited / Restricted

Forced induction of dairy cows other than for an expressly health related reason should be banned. When carried out for a health related reason this should be a restricted procedure.

(h) Rectal examination of horses - Restricted

(i) Tusk trimming (Boars) - Restricted

The current Code of Welfare for pigs omits to provide any sort of minimum standard for this procedure. Given this fact SAFE believe that the new regulatory regime should stipulate that this practice only be carried out with the use of appropriate pain relief and by appropriate method such as the use of a suitably placed embryotomy wire.

NAWAC

30. As previously submitted [paragraph 5 - 7 of SAFE’s Interim Submission], SAFE continue to be concerned with the inherent conflict of interest that comes with having New Zealand’s animal welfare legislation administered by a Ministry whose main focus is the promotion of economic growth via the production and sale of animal products. The current proposal to subsume all regulatory and guideline drafting within the MPI would appear to only exacerbate our concerns. Although it could never be said that NAWAC was a truly independent body its existence did at least allow for a modicum of separation between the Ministry and industry lobby groups.

31. As stated in the proposal one of the purposes of the review is to provide for “the ability for standards to evolve with societal expectations, scientific knowledge, good

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practice and available technology" with the intent of creating an "efficient process for developing standards". SAFE’s concern is that without a strong, truly independent research and advisory committee the ability of the ministry to remain focused on improving animal welfare standards in a manner that remains commensurate with the intent of the Act, and that is as free as possible from economic or industry persuasion, will be sorely hindered.

32. For this reason we agree with the proposal to maintain an independent committee on animal welfare and for that committee to be freely funded to pursue research on ideas, techniques and developments in all aspects of animal welfare as they affect New Zealand animals. The current level of funding as referred to in paragraphs 21(a) and 21(b) of our Interim Submission needs to be increased to reflect the breadth of this new role.

33. We resubmit our proposals given in paragraphs 30(b) and 30(c)(i) and (ii) of our Interim Submission and further submit that this committee should be mandated to publish all such research, free from hindrance, for the benefit of the greater public body of knowledge on animal welfare.

34. We believe this restructure presents the government with the perfect opportunity to refresh the membership of NAWAC and to take a new approach to the committee’s make up, purpose and powers. SAFE would like to see an increased number of animal welfare and animal advocacy representatives on the committee and feel the creation of a forward thinking and world-leading animal welfare research and development group would hugely benefit New Zealand’s reputation internationally.

III–Treatment Offences Apply to Animals in the Wild

35. SAFE would again draw the government's attention to paragraphs 31 through 35 of our Interim Submission. We acknowledge the inclusion in the proposal document of an admission that the current wording and structure of the Act make it doubtful that animals in a wild state are free from widespread ill treatment. We further acknowledge the intent to try and remedy this but feel the proposal falls short of what is required.

36. The government's reluctance to restrict hunting and fishing activities is understandable but should not prevent it from seeking to discharge its duties as
intended by the Act of prohibiting certain types of behaviour, in other words unreasonably or unnecessarily painful or distressful behaviour, toward all animals in New Zealand. Clearly at the current time the Act imbues no protection whatsoever on wild animals and this is simply unacceptable.

37. The reasons for this are twofold. Firstly is a commonly held misconception that s 175 exempts all wild animals from the protection afforded them under the Act. This potentially results in unreasonable acts performed against wild animals not receiving the same level of response or investigation as similar acts committed against domestic or production animals.

38. Secondly the interpretation in s 2 of the terms "hunting and killing" as they apply to s 175 provide an approach that is far too broad for the purposes of the Act which is to provide for the welfare of individual animals:7

    hunt or kill, in relation to animals, includes—
    (a) hunting, fishing, or searching for any animal and killing, taking, catching, trapping, capturing, tranquilising, or immobilising any animal by any means:
    (b) pursuing or disturbing any animal;—
    and hunting or killing has a corresponding meaning.

39. The problem relates to the breadth of conduct apparently covered by this definition. It may have been the intent of parliament to ensure that "legitimate" acts of hunting and fishing are not suddenly brought before the courts, and this is understandable, but the broadness of the wording effectively acts to confuse both investigators as well as those committing the harm as to which type of ill treatment is permissible. SAFE believe this is an important point as the ambiguity around what type of conduct is permitted is unfair to both the animals and the public at large. The Animal Welfare Act should provide a clear outline to the public of what conduct is permissible when animals are being hunted or killed in a wild state as it provides for quite severe criminal sanctions of up to five years imprisonment should a person be convicted of ill treatment of a wild animal.8

40. As far back as 1999 when Pete Hodgson’s Private Member Bill was undergoing its third reading that member said to the house that “within 10 years someone will note

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8 Ibid. 241.
that there are issues concerning hunting and fishing that ought to have been addressed by codes of conduct but have not been addressed by them. 9 SAFE would urge the government to take the opportunity finally provided to it by this review of the Act to ensure that what is perhaps the Act's biggest weakness is remedied comprehensively and clearly.

41. SAFE submits that the current proposal to "prevent extreme conduct that goes beyond acceptable practice" is too vague and will not suffice to adequately clarify the ambiguities discussed above. Rather, as discussed in paragraph 35 of our Interim Submission SAFE urges the government to explicitly mandate the need for reasonableness to be invoked when hunting or killing any animal in a wild state. This could be most easily achieved by amending the current wording of s 175 to add the phrase: 10

"...so long as the hunting or killing was undertaken in a reasonable manner, taking into account the method utilized to hunt or kill the animal and the steps taken to reduce any unnecessary pain or suffering."

to the end of the section. This would have the effect of allowing investigators to assess the appropriateness of the actions and take action where necessary.

42. Our Australian neighbours have chosen the option of regulating the practice of hunting and have included such requirements as the New South Wales Code of Practice for Licensed game Hunters:

5 Obligation to avoid suffering

An animal being hunted must not be inflicted with unnecessary pain. To achieve the aim of delivering a humane death to the hunted animal:

(a) it must be targeted so that a humane kill is likely, and
(b) it must be shot within the reasonably accepted killing range of the firearm and ammunition or bow being used, and
(c) the firearm and ammunition, bow and arrow, or other thing used must be such as can reasonably be expected to humanely kill an animal of the target species.

6 Lactating females with dependent young

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9 New Zealand Parliamentary Debates, 578 NZPD 17433-17434 (16 June 1999). Quoted in Sankoff above, note 7 at 245.
10 Above, note 7 at 249-250.
If a lactating female is killed, every reasonable effort must be made to locate and humanely kill any dependent young.

7 Wounded animals

If an animal is wounded, the hunter must take all reasonable steps to locate it, so that it can be killed quickly and humanely.

43. Should the government chose the regulatory option as it intends to do with the current Codes of Welfare this would be a satisfactory way to set out which methodology and techniques are acceptable for specific types of hunting.

44. During one of the workshops held by the Ministry a point was raised by representatives of the Animal Health Board around large scale pest control operations conducted by government agencies and their concern that any change to the legislation may be detrimental to the efficient control of introduced predator species. SAFE would suggest that if this is an area which might hold back any clear introduction of a requirement for reasonable conduct with regard to wild animals that there could be a decoupling of recreational hunting and fishing from state sanctioned pest control. The former would be required to be undertaken in a reasonable manner whilst the latter would be exempt from this compulsion unless the methods used were demonstrably unreasonable and resulted in extreme suffering.\(^\textit{11}\)

45. Finally it is our position that some particular types of hunting that currently occur in New Zealand represent such a high level of suffering and distress to the animals involved that they require the government to take a prohibitory stance in order to prevent the unjustifiable treatment that currently exist. The use of dogs to hunt and "bait up" wild pigs is one of these methods which causes such high levels of pain and distress to the individual animals involved, often for extended periods and in remote locations thus unduly prolonging their suffering, that SAFE believe its continued practice is unjustifiable. We submit that alongside the proposed amendments suggested above, the Government repeals s 31(2)(b) of the Act.

46. SAFE also take this opportunity to seek a prohibition on the practice of hunting animals from a helicopter, commonly referred to as "Heli-Hunting". It is our understanding that Peter Dunne MP has entered into this process already and we feel that this review is an ideal opportunity to finalise this process.

\(^{11}\textit{Ibid. 250.}\)
47. SAFE further submit that, in line with the intent of introducing an obligation of "reasonableness" to the acts of hunting and fishing, the practice of "shark finning" which currently occurs in New Zealand waters in direct contravention of the Act, be expressly prohibited. We do not feel that there is any justification for the continuation of this barbaric practice and believe all of New Zealand would support such a move.

Other Offences

48. SAFE would like to offer its support for the proposed inclusion of an offence to drown or attempt to drown any land animal, including an animal in a wild state. SAFE would like to see birds added to this category as well. Although prosecutions are able to be taken in most cases where animals are killed via this method, any attempt at explicitly prohibiting an inhumane method of treatment results in facilitating easier investigation, promoting public awareness and is fully supported by SAFE. This proposal deals only with land-based and most avian animals as the Marine Mammals Act 1978 covers marine mammals and seabirds.

49. With this view in mind SAFE would further submit that the Act be amended to include a specific offence of boiling alive any crustacean. We believe this practice is antiquated and causes unjustifiable pain and distress. The current Code of Welfare for Commercial Slaughter currently mandates that crabs, rock lobsters and crayfish be stunned or otherwise rendered insensible before they are killed, however it restricts this requirement to seafood processing premises, commercial fishing vessels, seafood shops and restaurants. SAFE would submit that this practice also be prohibited in any other situation including domestic households.

50. SAFE further submit that the induced moulting of poultry be prohibited. Our view is that induced moulting is illegal under ss 4(a) and 10 of the Act and must be ceased immediately by the industry. The provision in the current Code for the allowance of a practice in which mortalities are expected to rise is, we submit, not only morally abhorrent, but runs in direct contravention of both the wording and the spirit of the Act.

51. It is clear from the fact that the vast majority of New Zealand poultry farmers do not employ this method of practice that it is not only completely unnecessary, but also that an immediate ban is both feasible and preferential. This would also preclude the use of s 73 of the Act as an excuse to continue the practice.
Enforcement Tools

52. SAFE is in agreement with the need for a wider range of enforcement tools for inspectors to utilise in the field. As the proposal document correctly points out there are many instances where low to medium level offending is encountered, sometimes on a recidivist basis, yet where a prosecution through the courts is not the most viable option.

53. As it currently stands inspectors are limited, in these instances, to a verbal or written warning issued to those persons who have failed in their duty of care toward an animal. Oftentimes these warnings are met with outright disdain by offenders or blatantly ignored. The ability to use the issuance of a fine as an incentive to comply would add greatly to the ability for inspectors to improve animal welfare in New Zealand.

54. SAFE are therefore in agreement with the proposal to introduce new infringement offences and to increase the maximum fine from $200 to $1,000.

55. We would question why there is a proposal to limit or restrict the number of inspectors who are empowered to utilise this tool and submit that once an inspector attains his or her warrant they be given a full range of powers to enforce animal welfare standards.

56. SAFE would also urge caution as to how infringeable offences are included in the legislation. We do not want to see the diluting down of offences due to the inclusion of an infringeable component, and care will need to be taken to ensure the most appropriate offences are linked to this proposal.

57. SAFE further submit that it is taken into account that a large component of the day to day implementation of the Act takes place in urban or semi rural areas and involves either domesticated companion animals or small scale production systems. The indication in the proposal is to tie the infringement offences directly to the new regulations and we are concerned that this may limit too severely the situations in which infringement offences can be utilised.

The New Zealand Animal Welfare Strategy
58. 'Using animals is acceptable as long as it is humane' is not a universally held value. It does not represent the values of SAFE or numerous other stakeholders. Nowhere in the strategy is the sentence of animals mentioned. This is not a contentious issue but a fact and is the fundamental reason for animal welfare standards. The capacity for animals to suffer or flourish is not clearly separated from their economic utility or use as companions for humans. The behavioural needs of animals are provided for in the Act but it is hard to see where such considerations fit within the strategy.

59. In the section asking 'why does New Zealand need a strategy', a positive framing would be better and more aspirational. This section is limited by its exclusively anthropocentric framing, considering animals only in relation to their utility to humans. Outcome 2 raises the inference that cruelty that does not affect our trading reputation is somehow of less concern.

60. The strategy only appears to meaningfully cover animals used in industry or kept domestically. Only the status of human owners is meaningfully considered. There are thousands of New Zealanders who do not own animals but are deeply concerned for them. What of wild animals? They appear to be subject to the kind of blanket exemption evident in s 175 on the exemption for hunting of wild animals.

61. Present accepted levels of welfare in NZ are not at the highest level by comparison with international standards and it is misleading to label them 'best practice' in this context. As just one example, the use of cages for layer hens is being phased out across the European Union.

62. SAFE commend the commitment made in the strategy to establish evidence bases for animal welfare performance, earlier intervention in emerging animal welfare issues by industry and improved compliance with animal welfare standards but it is difficult to see how this will be done with no further commitment of resources to implementation, education and particularly enforcement.
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Introduction

1. These submissions are made on behalf of the animal advocacy organisation SAFE. The Ministry for Primary Industries ("MPI") is currently undertaking a review of the Animal Welfare Act 1999 ("Act"). SAFE, as an interested party, is well-placed to comment on many of the issues that should be addressed in the review.

2. The coming into force of the Act on 1 January 2000, was a significant step. It was, however, only a first step towards an adequate animal welfare regime in New Zealand. If the current review is to be meaningful and effective it should begin by acknowledging that there remain serious deficiencies in the scope and operation of the Act. That is particularly so in relation to "non-companion" animals -- farm animals, animals used in sport and entertainment, animals used for research and testing, and animals in the wild. The laudable welfare principles written into the Act have not, for various reasons, translated into improved welfare outcomes for these animals. In over 12 years little has changed on the ground. The purpose of this paper is to address some of the main reasons for that.

3. It is unclear to what extent MPI intends to consult further with stakeholders before releasing its public discussion documents. SAFE has had one brief meeting with MPI personnel, in July last year, and understood that that was the beginning of a consultation process. However, MPI has not yet disclosed its proposed changes, or even its tentative proposals, so there has been no opportunity yet for meaningful comment. SAFE therefore wishes to lodge these interim submissions. The submissions highlight the main issues that SAFE submits should be part of the review, and contain suggestions for reform. The submissions are a 'high level overview' and do not, as yet, descend into the detail of drafting proposed amendments to the Act. However, SAFE envisages making further submissions at that 'micro' level in due course, as the review progresses.

4. Prior to finalising these submissions representatives of SAFE have conferred and met with representatives of the World Society for Protection of Animals ("WSPA"), the Royal New Zealand Society for the Prevention of Cruelty to Animals ("SPCA"), and the New Zealand Veterinary Association ("NZVA"). The four organisations are largely in agreement as to the reforms required.
Summary of submissions

5. It is submitted that MPI’s review of the Act should address the following significant shortcomings in the current animal welfare regime:

(a) Organisational structure. There is an inherent and obvious tension between the wider responsibilities of MPI (to maximise export opportunities for animal products) and the stated objectives of the Act (to promote the welfare of animals and protect them from ill-treatment). The primary responsibility for administration and enforcement of the Act, including the recommending of Codes of Welfare, should be moved from MPI (including the Minister for Primary Industries ("Minister"), and the Director-General) to an independent specialist commission (akin to the Commerce Commission) headed by its own commissioner and chief executive.

(b) Funding/resources. The resources allocated by the Government for animal welfare continue to be grossly inadequate. The recent Budget allocates only $6.01m for all aspects of animal welfare -- administration, enforcement and ministerial policy advice -- for the 2012/13 financial year. This is 0.913% of the total MPI appropriations of 657,583m, and 0.007% of the total Budget appropriations. This stands in stark contrast to the $21.2billion (50%) of New Zealand’s export earnings attributable to animals and animal products. Insufficient funding means the Act is not able to be applied and enforced effectively.

Even in purely economic terms, this under-investment in animal welfare is surprising. New Zealand’s trading reputation and export opportunities/markets will be harmed should welfare crises continue to occur and become more public.

(c) NAWAC/codes of welfare. The minimum standards contained in codes of welfare issued by the National Animal Welfare Advisory Committee ("NAWAC") are intended to give effect to the fundamental welfare obligations in the Act, by providing the necessary detailed minimum standards of care. However, many of the codes of welfare contain standards that instead violate those welfare obligations. These (unlawful) minimum standards have undermined the Act by perpetuating many cruel farming practices that existed prior to the Act. That is
especially so in relation to farm animals and other non-companion animals. It is submitted that the Act should be amended to:

(i) Ensure that NAWAC has the resources, independence, membership and powers needed to fulfill more effectively the important regulatory and advisory roles vested in it under the Act, and to ensure that the codes adhere to the Act;

(ii) modify the prescribed procedures for making welfare codes. Industry groups, and MPI, have too much influence over the content of the codes. No one other than NAWAC should have power to prepare a draft code. The practice of NAWAC, MPI and industry groups preparing “agreed versions” of draft codes for public consultation must also stop.

(iii) remove or tighten up the wording of the exemptions in s 73(4). These are invoked too readily, particularly in relation to factory farming practices, and are used (again, on legally questionable grounds) to defeat the welfare obligations contained in the Act.

(d) Further protections needed for wild animals. On its proper interpretation s 175, relating to the hunting (including fishing) and killing of wild animals, arguably provides only a limited exception, not a wide exemption, from the Act. But the precise scope of s 73 is unclear, and consequently many deliberate acts of cruelty against wild animals have not been prosecuted.¹ The Act needs to be amended to provide further protections for wild animals hunted or killed for recreation or sport, and for those considered as pests. In addition, certain kinds of hunting should be banned or restricted, including heli-hunting, duck-shooting, and hunting that involves the use of animals (such as pig dogs) to attack wild animals.

(e) Painful practices that should expressly be banned or restricted. Much of the Act’s focus is on ‘high principle’, with too many important matters, such as painful husbandry practices, left to be dealt with by codes of welfare and orders in council. That has proved ineffective, and consequently much animal suffering has remained unaddressed. The Act should be amended expressly to ban, and

to restrict (by classification as a “restricted surgical procedure”) many of these painful practices.

(f) **Prosecutions.** The enforcement provisions of the Act should be boosted to specify additional infringement offences, and facilitate the disposal and housing of seized animals. In addition, codes of welfare should have the status of regulations and a breach of a minimum standard should, of itself, constitute an offence.

(g) **The use of animals in research, testing and teaching.** Part 6 of the Act sanctions, subject to certain safeguards, the violation of the welfare obligations in the Act. Despite the comprehensive regulatory framework created by Part 6, and the accompanying public law obligations imposed on its participants (the Director-General, the National Animal Ethics Advisory Committee (“NAEAC”), animal ethics committees (“AECs”), and accredited reviewers), animal research is largely shrouded in secrecy, and therefore lacking in public accountability. Even within the regulatory ‘chain’, only minimal, largely statistical, information filters back to NAEAC and the Director-General. These shortcomings are unacceptable, especially given the number of animals used annually (242,149)\(^2\) and the number of those (20,772) subjected to “very high” and “high” suffering. The Act, and regulations, should be amended to put in place more robust safeguards – stricter criteria for all approvals, and additional requirements for independence, monitoring, reporting, and accountability.

(h) **Further bans.** The Act should also be amended to ban the following: (i) exports of live animals for slaughter, (ii) exotic animals in circuses, (iii) cetaceans in captivity and (iv) cosmetic testing on animals.

Organisational structure – the need for an independent commission

Current structure

6. Currently the responsibility for administration and enforcement of the Act is organised as follows:

(a) MPI is the Ministry responsible for administration of the Act. This is carried out by the Animal Welfare Standards Directorate within the Biosecurity and Animal Welfare branch of MPI, and by MPI’s (region-based) general Compliance and Enforcement Directorate. These groups are responsible to the Director-General (chief executive) and the Minister. Animal welfare is a small part of MPI’s overall operations, its core responsibilities being agriculture, forestry, fisheries, biosecurity, and food safety standards.

(b) Two powerful advisory Committees are established under the Act, namely, (i) NAEAC, responsible for the ethical treatment of animals in research, testing and teaching; and (ii) NAWAC, responsible for the welfare of all other animals; and for recommending to the Minister the codes of welfare. Members of the Committees are appointed by the Minister. Secretariat assistance, as well as scientific and other advice, is provided by MPI.

(c) The SPCA is a non-government organisation, with representatives on NAWAC and NAEAC. It has important law-enforcement functions under the Act as an “approved organisation” under s 121, including prosecuting offenders and caring for confiscated animals. Traditionally the SPCA has focussed on urban and companion animals. Almost all enforcement in urban areas is undertaken by the SPCA. More recently, because of lack of resources within MPI, the SPCA has increasingly supported MPI’s rural activities.

Concerns about the current structure

7. The above structure gives rise to a number of important concerns:

(a) MPI is the body responsible for the administration of the Act. However, MPI is not the logical or appropriate ‘home’ for animal welfare. There is an inevitable
and inherent conflict of interest between MPI's wider responsibilities and its role under the Act. MPI describes its wider "vision" as follows:

Our vision is to grow and protect New Zealand. We do this by: maximising export opportunities for the primary industries, improving sector productivity, increasing sustainable resource use, and protecting New Zealand from biological risk. (Emphasis added).

This vision includes maximising export opportunities for animal products. That in turn involves the greater use of animals. By contrast, the Act is concerned with the promotion of the welfare of animals and the prevention of their ill-treatment. The tension between these two objectives is obvious.

The Minister is required to oversee all MPI’s core sectors – agriculture, forestry, fishing, biosecurity, and food safety standards – as well as animal welfare. With respect, it is akin to putting the fox in charge of the henhouse. The Director-General's oversight of animal research, in which MPI has a huge vested interest, is also inappropriate.

Animal welfare deserves to be a stand-alone objective, in and of itself. It does of course contribute to greater productivity and enhancement of New Zealand's trading reputation, but it should not be viewed as just a by-product of those pursuits. Animals need their own, independent, voice. The continuation of animal suffering under many of the farm practices sanctioned by codes of welfare, and the inadequate level of Government funding allocated for animal welfare, are testament to that.

The recent restructuring of MPI into a much larger ministry further heightens the risk of animal welfare being marginalised and under-funded. SAFE understands that since this restructuring occurred the enforcement of the Act has become organised on a regional, rather than national basis, and that many dedicated employees, including senior managers and inspectors, have chosen to leave MPI and work elsewhere.

(b) NAWAC and NAEAC are not sufficiently independent of MPI but must rely on MPI for all administrative support and for scientific support and advice. The Committees do not have their own secretariats, or indeed any independent
resources. MPI works closely with the Committees at all stages of developing welfare codes and reviewing codes of ethical conduct.

(c) The SPCA, which also performs an essential regulatory role under the Act, is heavily dependent on charitable donations and volunteer help, receiving only minimal Government funding. This reflects the low priority placed by the Government on the SPCA’s role. The SPCA and MPI and are largely autonomous organisations, despite a long-standing enforcement co-operation between them. A closer working partnership could be developed between the SPCA and a new commission dedicated to animal welfare. However, SAFE submits that it is important that enforcement is carried out by the state not by a charity. Therefore all enforcement should preferably be the responsibility of the new commission.

Proposals:

8. It is submitted that as part of any review consideration should be given to the following:

(a) Restructuring the current system, by merging those groups within MPI that currently deal with animal welfare education, enforcement and policy (the Animal Welfare Inspectorate and parts of the region –based Enforcement Directorate) to create one central, independent organisation, with overall responsibility for administration and enforcement of the Act. This could take the form of an independent statutory regulatory commission akin to organisations such as the Commerce Commission. The organisation would be headed by a new commissioner (in place of the Minister), and a new chief executive (in place of the Director-General). All powers currently vested in the Minister and Director-General would be vested instead in the new commissioner and chief executive.

It would be most important that the new organisation has the legal structure and powers, and level of funding, to ensure that it is fully effective. The new organisation would still need to work very closely with MPI, but from a position of independence.

(b) It is envisaged that NAWAC and NAEAC would operate within the new organisation instead of within MPI. Both Committees would also have the added powers, resources and independence discussed further below. NAWAC would
recommend codes of welfare to the new commissioner. If approved by the commissioner those codes would be made as regulations (not by the Minister but by the Governor-General by Order in Council). NAEAC would make recommendations to the new chief executive.

(c) The SPCA could continue to work co-operatively, but more closely, with the new commission rather than MPI. The new commissioner would appoint all animal welfare inspectors. Enforcement, in relation to all animals in all areas, would preferably be the function solely of the new commission. Alternatively, those inspectors working for the SPCA could remain employed by the SPCA, but workplace training and performance monitoring could be overseen by the new commission. This would allow for a more uniform response to complaints, and would eventually lead to the creation of a nationwide operating procedure for all inspectors.
Resources / funding for administration and enforcement of the Act

Inadequate levels of funding

9. The legal regime established by the Act can only be as effective as the resources put in place to implement and enforce it. Despite a small increase in the 2011 Budget, the level of funding currently provided by the Government for the administration and enforcement of the Act remains grossly inadequate.

10. All Government funding for animal welfare is allocated in the Budget under Vote Primary Industries (formerly Vote Agriculture), under two “output expenses”:

- “Animal Welfare Education and Enforcement” and

- “Animal Welfare Policy Advice”. This is limited to the provision of advice to support decision-making by Ministers on Government policy relating to animal welfare. This output expense has been changed in Budget 2012 to “Agriculture and Forestry Policy Advice”, which includes policy advice on animal welfare.

11. The appropriations in the last two financial years, 2010/11 and 2011/12, were as follows:

<table>
<thead>
<tr>
<th></th>
<th>10/11 financial year</th>
<th>11/12 financial year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal Welfare Education and</td>
<td>$4.289m</td>
<td>$5.555m</td>
</tr>
<tr>
<td>Enforcement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Animal Welfare Policy Advice</td>
<td>$844,000</td>
<td>$1,014,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5.132m</td>
<td>$6.569m</td>
</tr>
</tbody>
</table>

12. The estimated appropriation for “Animal Welfare Education and Enforcement” in the latest Budget, for the 2012/13 financial year, is $5.136m. The specific amount allocated for animal welfare policy advice within “Agriculture and Forestry Policy

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Advice is $876,000. The total amount of government funding allocated to animal welfare for the next financial year is therefore $6.012m, a decrease on last year.

13. The funding for NAWAC is not additional to, but is included in, the above allocations. The figure budgeted for NAWAC for the 2011/12 year was only $129,260. Funding for NAEAC appears to come out of the welfare budget as well.

14. The SPCA’s 2010 Annual report records that it received a Government funding grant of $1.4m in the 2010 Budget, to be drawn over 4 years ($300,000 per year) to enable the SPCA inspectors to assist MAF in their inspectorate farm work. The SPCA will therefore receive $300,000 from MPI in the 2012/13 financial year. Government funding for the SPCA is also paid from the MPI allocations for animal welfare set out above. It is not additional. The funding is earmarked for ‘rural cases’ only – those involving animals on farms.

15. The total government funding for animal welfare (including policy advice to the Minister, NAWAC’s funding, and the grant to the SPCA) of $6.021m in the next 2012/13 year is a very small amount, having regard to the following:

(a) The importance and extent of the regulatory functions required to be performed by the Minister, MPI’s animal welfare and compliance inspectorates, NAWAC and the SPCA under the AWA;

(b) The contribution of animals and animal products to New Zealand’s economy. Nearly half of New Zealand’s export income is derived from animals and their products. For the year ended March 2011 the total export earnings attributable to animals and their products was $21.2 billion. To allocate so little funding for the welfare of the animals upon which the economy is so heavily dependent is indefensible. The amount spent on animal welfare is only 0.028% of export earnings.

(c) The total funding allocated by the government to MPI. The $6.01m for animal welfare is only 0.913% of the total 2012/13 MPI budget of $657.583m. Animal welfare is only 0.007% of the total Budget appropriations of over $81billion.


(d) The relative levels of funding allocated to other areas. For example, Vote Sport and Recreation appropriations for 12/13 total $84.194m. The total appropriations for Arts Culture and Heritage for 12/13 amount to $294,312m.

16. Even from a purely economic perspective, it is surprising that the Government invests so little in animal welfare given New Zealand’s dependence on exports of animal products. If animal welfare crises continue to occur, and become public, that could potentially cause enormous damage to New Zealand’s reputation and its export and trading opportunities.

17. The inadequate level of funding has resulted in insufficient resources to monitor and enforce compliance with the Act. For example:

(a) There are approximately 150 million animals (including poultry) commercially farmed, on more than 60,000 commercial farms. However, MPI’s Enforcement Directorate currently employs only around 11 full time dedicated animal welfare inspectors to respond to on-farm complaints nationwide. Most of their time is spent responding to the most serious complaints of offending in the rural sector.

Because of the shortage of dedicated front-line animal welfare inspectors, MPI does not, as a matter of course, undertake any regular monitoring or inspection of farms except in relation to targeted monitoring programmes. Most farms are therefore never visited by a dedicated animal welfare inspector, unless there is a complaint. Some 2.5% of total farms are subject to complaints. For the other

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6 Of which $58.192m is allocated to High Performance Sport and $19.151m is allocated to Sport and Recreation Programmes. Under Vote Commerce the Commerce Commission’s Litigation Fund (for external direct costs of major litigation) for 12/13 is $10.790m.
7 MAF provided a figure of 62.8m at 30 June 2010. These (surprisingly) appear to be MPI’s most up-to-date figures, but are based on an incomplete dataset, as they cover only businesses with more than $200,000 of GST sales or purchases. MAF’s OIA response dated 28 September 2011. Nor do those figures take into account the rapid ‘turnover’ of many farm animals, such as poultry. Broiler chickens are slaughtered at only six weeks of age, and some 90 million are killed annually. SAFE believes that actual figures are therefore much closer to 150 million.
9 MAF has advised that there are 246 Verification Agency verifiers working at slaughter premises. While they are appointed as animal welfare inspectors they are not dedicated inspectors and perform a range of functions at slaughter premises — primarily verification functions under the Animal Products Act. It is not known what proportion of their time is in fact spent on animal welfare; MAF OIA response letter dated 13 September 2011.
97% there is no way of knowing whether farms are complying with welfare requirements. That is an unacceptable situation, especially when so many minimum standards rely on voluntary compliance – for example, the maximum time that sows may spend in sow stalls and farrowing crates, lighting and ventilation requirements, stocking densities, conduct of painful husbandry procedures, handling of animals during catching and loading into trucks for slaughter -- the list is endless.

(b) As stated above, the SPCA is almost entirely funded by charitable donations and bequests, despite the fact that the SPCA performs an essential and important regulatory and enforcement functions under the Act. The SPCA currently employs about 97 inspectors, operating mainly in urban areas, but providing some support to MPI in rural areas. Of those inspectors, SAFE understands that about 25% are unpaid volunteers, and only about 20+ are full-time. Many inspectors also carry out other duties such as animal attendant, shelter manager, and so on. The SPCA is significantly underfunded.

(c) The inevitable outcome of the lack of funding is that many violations of the Act, go undetected, and of those that are detected and lead to complaints, many are not prosecuted. Levels of prosecutions are still low, as the following MAF figures\(^{11}\) show:

<table>
<thead>
<tr>
<th>Year</th>
<th>Complaints</th>
<th>Prosecutions recommended</th>
<th>Prosecutions taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/08</td>
<td>948</td>
<td>unknown</td>
<td>0</td>
</tr>
<tr>
<td>08/09</td>
<td>689</td>
<td>unknown</td>
<td>2</td>
</tr>
<tr>
<td>09/10</td>
<td>646</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>10/11</td>
<td>572</td>
<td>23</td>
<td>6 (15 initiated but not completed)</td>
</tr>
</tbody>
</table>

**Proposals:**

18. Adequate funding is fundamental. Lack of funding necessarily impacts negatively on all aspects of the current animal welfare regime, including inspections and monitoring of farms, investigations, prosecutions, welfare code drafting, consultations and reviews, research and policy development. It is submitted that it is self-evident that funding and resourcing must be increased to realistic levels to enable MPI and

\(^{11}\) MAF OIA letter of response dated 28 September 2011.
NAWAC to undertake effectively the important functions and obligations they are required to fulfil under the Act. Acknowledging this need should be a first step in the review.

19. As stated above, even from an economic perspective, it is extraordinary that the Government does not invest far greater resources into maintaining its trading reputation and protecting its export opportunities and markets. Further welfare crises (there have already been a great number) could cause significant economic harm.
NAWAC / animal welfare codes:

20. It is perhaps in relation to the welfare codes that the legislation is most demonstrably failing to work as Parliament intended.

**NAWAC is inadequately resourced**

21. NAWAC is not sufficiently funded and resourced, and nor is it given sufficient independence, or an appropriate membership, to enable it to fulfil adequately the wide-ranging and important functions (with resulting workload) that it is required to perform under the Act. For example:

(a) The total figure budgeted for NAWAC for the 2011/12 year was only $129,260. An inadequate sum to cover the development, review, consultation on, and recommendation and making of all the required codes of welfare. NAWAC is required to grapple with many complex practical, scientific, ethical and economic issues. To say nothing of NAWAC’s other functions. The codes of welfare are important legislative instruments, regulating a wide area of animal welfare, and deserve proper input and consideration.

(b) It is not yet known how much of the $129,260 was allocated to fees for the NAWAC members, as opposed to the MPI support services provided to NAWAC. The position of a NAWAC member is only part-time – most members have other occupations. The Committee’s 2010 annual report, issued in May 2011, indicates that in that year the 11 members were collectively paid total fees of only $48,181.25. This represented only 105.87 paid days in total for all members.\(^{12}\) In 2010 NAWAC issued four new codes – dairy cattle, commercial slaughter, dogs, and sheep and beef cattle. It also completed a review of the pigs code, and continued work on the broiler chicken and layer hen codes and the development of several other codes.\(^{13}\) A great deal of important work was covered in very little time.

\(^{12}\) A daily fee (for attendance at meetings and preparation) of $550 for the Chairman and $400 for members

(c) NAWAC does not have its own secretariat. Instead it relies on MAF’s Welfare Directorate (which in 2011 employed only 8.75 FTEs, including the Director) for secretariat support and for scientific and other advisory support.

22. These resourcing and structural issues appear to have caused or exacerbated the shortcomings identified below.

**NAWAC is not sufficiently independent of the industry and MPI**

23. NAWAC’s fundamental statutory obligation is to give priority to the promotion of the welfare of animals, not the economic interests of the farming industry. NAWAC’s recommendations of welfare codes that perpetuate non-complying farming practices (discussed further below), or prescribe unreasonably long phase-out periods, raises questions as to whether NAWAC is able to resist pressure from lobby groups within the industry. Its ability to act independently of the industry, and of MPI, is in question.

24. It is of particular concern that industry representatives and MAF appear to play a significant role in the preparation and review of draft welfare codes. For example, the draft Broiler Hen Code was written by a working group established by the Poultry Industry Association of New Zealand Inc. Documents released under the OIA indicate that the current draft Code for Layer Hens was prepared by a working group comprising representatives of the industry (the Egg Producers Federation), MAF and NAWAC as an “agreed version” for public release. There was also close collaboration on how the accompanying economic analysis and other reports would be summarised for public presentation. MAF representatives routinely attend all of NAWAC’s meetings. Given these processes it is unsurprising that NAWAC appears to be ‘captured’ by industry and MAF views.

**Many minimum standards do not comply with the Act**

25. There has, 12 years down the track, been little improvement in the minimum standards for animal welfare under the new welfare codes, which now number 15. Under these codes many farm animals continue to endure practices that violate the welfare obligations in ss 10 and 11 or constitute conduct that would otherwise be an offence against ss 12, 21,22, 23 or 29 of the Act, and which are therefore unlawful. Unless the exemption in s 73 is properly invoked, the minimum standards are required to give effect to the welfare obligations in the Act. This many of them fail to do. For example:
(a) Layer hens continue to be housed in battery cages, with the latest draft Code canvassing options for this to continue for a period anywhere from 2015 to 2030, between 15 and 30 years after the coming into force of the Act. Confining a hen, for the duration of her life, in a barren battery cage comprising 550 cm²/hen, a sloping wire mesh floor and a height of only 35-40 cm constitutes a flagrant breach of the obligations in ss 10, and 11 of the Act. The proposed phase out periods are grossly unreasonable, and not justified by the “exemptions” in s 73 of the Act (discussed further below);

(b) The Animal Welfare (Broiler Chickens: Fully Housed) Code of Welfare 2003 is a grim document that disregards the welfare obligations of the Act. Stocking densities are still excessively high – the legal maximum stocking density is 38kg of live weight per sq m.\textsuperscript{14} This means 19 birds can be kept per sq m, giving each bird a floor area of less than an A4 piece of paper, which will shrink still further as the birds grow. There is no ability for birds to express normal behaviours. The same code allows a maximum of 4 chickens to be held per hand during catching – a recipe for injury. Lighting and ventilation (ammonia level) standards are grossly inadequate. The maximum stocking density in transportation crates of 65 kg/m² is too high. The Code fails to address such things as the selective breeding of chickens. These breeding practices have lead to ‘non-survivor’ birds unable to support their own weight. Nor does the Code address the feeding of chemicals to promote growth.

(c) Under the Animal Welfare (Pigs) Code of Welfare 2010 sows will remain confined in sow stalls until 3 December 2015, 15 years after the Act came into force. Even after 3 December 2015\textsuperscript{15} minimum standard 11(f) will allow mated sows to be confined individually in pens that need only provide sufficient space to stand up, lie down comfortably, turn around without touching the walls, and have separate lying, dunging and eating areas. There is no requirement that the sow be able to move about. This is not much of a welfare improvement on the stalls, and significantly there is no time restriction on confinement in such pens.\textsuperscript{16}

\textsuperscript{14} NAWAC acknowledged in the Code that stocking density is “a key factor in determining the provision of adequate animal welfare”, and said that it would review the maximum stocking density within 5 year of the issue of the Code. A review was conducted and NAWAC made no change..
\textsuperscript{15} Sow stalls are already banned in the UK and Sweden, and some states of the US. They will be banned in Denmark from 2014.
\textsuperscript{16} Boars may also be confined in such individual pens.
Sows will also continue indefinitely to be confined in farrowing crates for up to 5 weeks per reproductive cycle (12 weeks per year), unable to turn or move or properly mother their piglets. The Code does not begin to meet the welfare obligations of the Act. Many sows will continue to live their lives in close confinement, moving from individual pen to farrowing crate, a continuing cycle of ill-treatment. Minimum standards for indoor group housing are not much better.

(d) The Animal Welfare (Dairy Cattle) Code of Welfare 2010 ("Dairy Cattle Code") contains minimum standard 9, dealing with indoor housing for cows and calves. It sets only a few basic requirements. The minimum space required per cow is described only in terms of any cattle being "able to lie down for sufficient periods each day" to "meet their behavioural needs". A cow's behavioural needs extend beyond lying down. Worse, the minimum standard fails to address how long cows may be kept indoors. As worded, it would not prevent the permanent indoor confinement of cows, either housed in groups in a shed or in individual enclosures. The factory-farming of cows would be contrary to the Act. The Code should be preventing, not facilitating, such a development, particularly given the recent efforts by 3 companies to establish large — scale intensive farming facilities in the South Island. Those proposals were abandoned, but more can be expected.

(e) At the other extreme from intensive housing is the lack of adequate minimum standards, for all pastoral animals, for shelter from adverse weather conditions arising from rain, wind, snow and sun. It is a very common sight in New Zealand to see animals in paddocks in all weather with no shelter. Many Codes (such as the Dairy Cattle Code) impose only very general, vague obligations in the minimum standards, leaving more specific shelter specifications for the unenforceable "recommended best practices".

(f) Unnecessary and painful husbandry practices are still performed and often in a crude manner. It is extraordinary, for example, that the practice of mulesing has been permitted by NAWAC to continue for so long, even though there are other methods of controlling flystrike. Mulesing is the surgical slicing away (without anaesthetic, usually with hand shears) of skin from the tail area of a merino sheep, leaving a large wound. The Animal Welfare (Sheep & Beef Cattle) Code of Welfare 2010 merely records that the industry has "decided" that mulesing will cease by December 2010 — 11 years after the Act came into force -- but does not
make that a requirement. SAFE understands that not all farmers support this voluntary 'ban', and so the practice has still not ceased entirely.

(g) Key welfare concerns have still not been addressed in relation to, for example: unacceptably high lambing mortality rates; bobby calf management; induction of dairy cows to manipulate calving patterns; transportation of animals; animal welfare emergency management and planning; commercial slaughter; and rodeos.

**NAWAC’s use of the “exceptional circumstances” exemption in s 73(4)**

26. NAWAC has too readily purported to invoke the “exceptional circumstances” provision in ss 73(4)(a) and (c) of the Act, relating to the “feasibility and practicality”, and “economic effects” of a transition from current practices to new practices, in order to justify a failure to ban or rapidly phase out practices that breach the provisions of the Act. This has particularly been the case in relation to factory farming practices, for example, in relation to the very protracted phasing out of battery cages and sow stalls. Once the exemptions are invoked they have significant consequences. They, in effect, sanction minimum standards that do not comply with the Act (s 73(3)). These minimum standards may be relied on as a defence to a prosecution (s 39(2)(c)).

27. The continued use of farrowing crates under the Pigs Code provides a good example of NAWAC’s inappropriate use of s 73(4). NAWAC has acknowledged that the use of farrowing crates “for extended periods” breaches the obligations of the Act, but has invoked the exemptions in ss 73(4)(a) and (c) to ‘justify’ a minimum standard allowing sows to be confined in farrowing crates for up to 5 weeks per reproductive cycle (12 weeks a year). It is not apparent why the exemption applies, or why no phase-out period has been specified.

**Consultation inadequate**

28. The level of consultation undertaken by NAWAC, and the information provided to consultees, is frequently insufficient to enable meaningful participation. For example, the level of information made available to the public and to consultees in relation to the draft Layer Hens Code has been inadequate, and it is understood that NAWAC may have commissioned further reports since the public consultation closed. NAWAC’s
practice of delegating to others the task of reviewing and summarising submissions is also questionable.

_A number of old codes of recommendations are still in place_

29. The care of many animals is still, after 12 years, governed by the old Codes of Recommendations and Minimum Standards. These are voluntary guidelines that were produced under the former regime. There are some 11 of these old Codes still in place — relating to, for example, horses. These old Codes do not reflect the requirements of the Act or have any legal status under the Act. However, notwithstanding their deficiencies they are promoted by MPI, and are often used to demonstrate that a particular farming practice is in accordance with good practice and scientific knowledge. It is understood that 3 of these old codes are currently under development — equine, saleyards and temporary housing.

_Proposals:_

30. It is submitted that the regime under the Act for making of welfare codes is in need of urgent and significant reform. In particular:

(a) NAWAC should be removed from MAF’s influence and control under the Act. Creating a new, independent, commission to administer the Act as suggested above, with NAWAC to recommend welfare codes to the new commissioner rather than to the Minister, would be a significant improvement. That is SAFE’s preferred solution. Either way, the ultimate responsibility for issuing codes of welfare, as regulations, should be vested in the Governor-General in Council.

(b) NAWAC should be given additional resources and powers (which would also underline its independence), including, for example:

(i) its own secretariat to provide administrative support. This secretariat should have physical separation from the wider organisation administering the Act (whether that is MAF or a new organisation as proposed above). It should also include a core group of suitably qualified full-time personnel to provide wider assistance to NAWAC for the performance of its functions under the Act.
(ii) power to seek/require information and advice from MPI as required, and to request MPI to undertake research;

(iii) powers to appoint independent experts to assist it and conduct research into welfare issues identified by NAWAC, and to seek other independent specialist advice (in addition to its existing powers under s 57);

(iv) powers to compel the provision of information, including by those in charge of animals.

Other public bodies exercising regulatory functions (such as the Commerce Commission and Gambling Commission) have much greater resources and powers than NAWAC.

(c) The requirements relating to membership of NAWAC should be changed as follows:

(i) a greater proportion of representation from animal welfare experts and animal welfare advocates;

(ii) an increased maximum number of members overall. A maximum of eleven people, most (if not all) of whom work in other full-time occupations, cannot be expected to fulfil the significant responsibilities imposed on NAWAC under the Act

(iii) the appointment of at least one, preferably two, experienced lawyers of high standing. This is important because NAWAC’s key function is to recommend delegated legislation in the form of welfare codes, and because of NAWAC’s public law obligations, including its obligation to exercise its powers in accordance with the Act and to consult.

(d) The procedures to be followed by NAWAC in making recommendations on the issue, amendment, suspension, revocation and review of welfare codes, should be reviewed. It is submitted that the following changes are needed:

(i) The industry, with its vested interests, should not be permitted to draft, or participate in the drafting, of the welfare codes. Section 70 of the Act
states that the Minister or NAWAC or “any other person” may draft a code. This greatly diminishes the integrity of this legislative function, and gives too much influence and power to industry groups. Those groups currently play a significant role in drafting codes, as discussed above. Codes should only be permitted to be drafted by NAWAC. In other regulated areas industry groups are not given this power. For example, the Gambling Act 2003 does not permit casinos or class 4 venues to draft gambling regulations; the Commerce Act does not permit commercial businesses to draft regulations governing market competition, and so on. Issues of animal welfare are not for industry self-regulation either.

(ii) Once it has prepared a draft code NAWAC should then be required to consult with affected persons, including the industry and MPI, and also release the code for public submissions. It is unacceptable for NAWAC to be seeking to achieve with the industry “agreed versions” of draft welfare codes for public consultation, as happened with the recent draft Layer Hen Code.

(iii) The degree of collaboration between NAWAC and MPI should be significantly reduced, to one of consultation only. MPI representatives should not routinely attend meetings of NAWAC. This underlines the need for NAWAC to have its own adequately staffed secretariat.

(iv) The consultation/notification provisions under s 72 of the Act should be extended to apply, at NAWAC’s discretion, to the amendment, suspension and revocation of welfare codes, as well as to the issue and review of codes.

(e) The wording of the ‘exemptions’ in s 73(4) should be tightened up and restricted as follows:

(i) Express even more clearly Parliament’s intention that the exemptions in s 73(4)(a) and (c) are to be invoked only in truly exceptional circumstances, not routinely (as is currently the case), and only for the purposes of determining a very short phase out period (where an immediate ban is not possible) for practices that otherwise breach the Act. Make it clear that practices that breach the Act must be banned immediately, or, if an
exemption is invoked, phased out as soon as practicable having regard to the degree of suffering caused by the practice, and within a specified maximum period of time. SAFE submits that the maximum phase-out period for any practice that breaches the Act should be no more than 5 years from the date of issue (or review or amendment) of the Code.

(ii) Repeal (or severely restrict) the exemption in s 73(4)(b) relating to "religious practices or cultural practices". The Act should impose uniform and objective requirements and offences, as do other penal regimes. Animals should not be subjected to suffering because of religious or cultural practices. A limited exemption has already been granted under the Commercial Slaughter Code of Welfare to allow Shechita slaughter of poultry, but repeal of the statutory exemption will preclude further applications by others. The Act should expressly state that all animals, without exception, should be required to be stunned before slaughter, and to remain insensible until death occurs.

Front line inspectors report an increase in backyard “homekill” situations involving poultry and sheep where animals are not stunned because of religious beliefs. This is unacceptable. The presence of the exemption in the Act causes confusion. The clearer the legislation, the easier it is for inspectors to handle situations in the field and explain to members of the public what is or is not permitted in New Zealand.

(f) Welfare codes are currently reviewed every 10 years. NAWAC should retain a discretionary power to review a code (or any part of a code) more frequently than that. Some codes, such as those regulating factory farming, may need more frequent reviews due to their complex nature, but others, such as the cat code, may not.

(g) The process of replacing the remaining old Codes of Recommendations and Minimum Standards with new welfare codes under the Act needs to be expedited. This presumably will occur if the resourcing issues are addressed as suggested above. The Act should impose a time limit for this.
Additional protections needed for wild animals.

Issues:

31. It is submitted that the Act needs to protect more clearly wild animals, including those hunted and fished for sport, recreation and food-gathering, those regarded as pests, and all other animals living in the wild.

32. In New Zealand hunting and fishing are widely engaged in. It is estimated that between 120,000 and 494,000 people actively hunt, some 213,000 freshwater fishing and 34,000 game bird shooting licences are issued annually, and approximately 1 million people engage in marine fishing. This raises a number of very significant welfare issues, as MAF has recognised in its June 2011 internal working document on hunting and fishing:

"Fear, injury and exhaustion during pursuit, capture and/or killing (e.g. fish subjected to rapid decompression, deer pursued by helicopters).

The humaneness of some killing techniques (e.g. holding pigs with dogs, fish asphyxiated, animals drowned).

The effects of wounding, including the animal being prevented from escaping, breathing normally, feeding, maintaining social groupings, ... pain and distress due to inflammation, muscle soreness etc, anxiety, shock, and eventual death (by humans or predators, or through the seriousness of the injury).

The duration and success of hunters and fishers in locating and despatching wounded animals.

Non-lethal injuries (e.g. 14% of live ducks retained shot gun pellets indicating prior wounding).

Welfare and fate of animals exposed to catch and release practices.

Harms (and benefits) to other animals (e.g. dependents, conspecifics, non-targets) associated with the removal of the target animal. May include predation of other animals (e.g. possums and pigs ... to protect native birds and lambs, respectively); disruption to a population's home range; leaving young without maternal or allo-parental support, especially during lactation; lost dogs; injuries to dogs (especially pig dogs)..."

33. Section 175 of the Act provides an exception in relation to hunting or killing, stating that subject to sections 176 to 178 and Part 6, "nothing in the Act makes it unlawful to hunt or kill" a wild animal. Section 175 arguably provides only a limited exemption from the Act. However, in a number of instances the Act has been interpreted by responsible officials to provide a blanket exemption for any killing of wild animals.

however cruel, prolonged and unjustified. Its precise scope is ambiguous, partly because of the wide definition of “hunt or kill” in s 2(1). The other adverse welfare consequences of hunting and fishing identified by MAF above also have not been addressed. The treatment of animals that are killed in the circumstances encapsulated by “hunting” often would be captured within the s29(a) offence of “ill treatment” were they domestic animals or livestock. So the exception operates as a wild animal exception but is not worded as such.

34. Enforcement agencies have tended to avoid using scarce resources to pursue prosecutions relating to actions taken while hunting, because the great uncertainty in this area makes the prospects of success remote. For this reason, there have been no prosecutions testing the bounds of s 175. The lack of jurisprudence in the area, and a common belief of officials that the exemption of hunting is absolute, means that in reality s 175 acts as a total exemption of the hunting and killing of wild animals from the Act, even though that is not the clear intention of Parliament.

35. The hunting or killing exception needs to be clarified and restricted, and positive measures put in place for the protection of the welfare of all wild animals. SAFE’s proposals, below, allow for some differentiation between wild animals hunted for sport and recreation and wild animals considered to be pests.

Proposals:

36. It is submitted that the Act should be amended to provide much clearer protection for all wild animals:

(a) In relation to hunting (including killing as part of hunting) for sport or recreation, it is submitted that clear restrictions need to be imposed on the harm that may be inflicted by these activities. Options include:

- amending s 175 to add a requirement that “the hunting or killing was undertaken in a reasonable manner, taking into account the method utilised to hunt or kill the animal and the steps taken to reduce any necessary pain or suffering”;

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19. Sankoff, ibid, p 250.
• amending s 175 to impose specific obligations on hunters, for example express obligations to avoid suffering such as targeting an animal for a humane kill, making reasonable efforts to locate and humanely kill dependent young where a lactating female is killed, taking reasonable steps to locate and humanely kill a wounded animal, and so on. There is such legislation currently in place in relation to game hunting in NSW\(^\text{20}\); or

• providing for the making of a code of conduct for hunting; and

• in addition, banning or restricting specific types of hunting that cause a particularly high level of suffering, such as heli-hunting, duck-shooting, and the use of animals (such as pig dogs) in hunting or killing a wild animal.

(b) In relation to *pest control*, it is logical to make a distinction between the control of invasive species and the recreational hunting of introduced species. The reality is that some species introduced into New Zealand for sport hunting and agricultural cultivation have become a threat to the continued survival of treasured native species and must be culled to prevent the latters’ extinction. Nonetheless, standards of humane treatment should apply to killing for the purpose of pest control. This has, for example, been put into effect in some Wild Animal Recovery Operation permits issued under s 22 of the Wild Animal Control Act 1977, which require that the method of destruction ensure a quick death.

(c) The Act should also make it clear that outside the activities of hunting and pest control, regulated as above, the provisions of the Act otherwise apply to wild animals.

\(^{20}\) Sankoff, *ibid*, p 249.
Painful practices that should be banned or restricted

Issues:

37. The welfare codes have failed to ban, and indeed have sanctioned, a number of painful practices that are both unnecessary for good husbandry and inflict a high level of pain, despite their non-compliance with the Act. In addition, significant operations are routinely being performed by farmers and farm hands with no veterinary supervision, and without anaesthetic or pain relief: NAWAC and the Minister have made insufficient use of the powers in s 16 of the Act to categorise painful husbandry practices as "significant surgical procedures". This includes a "restricted surgical procedure" or a "controlled surgical procedure": ss 6 and 15.

38. If categorised as a "restricted surgical procedure", the procedure can only be conducted by or under the supervision of a veterinarian, using sufficient anaesthetic or pain relief: s 17. The Act currently states, in s 2(1), that a "restricted surgical procedure" includes the debarking of a dog, declawing of a cat, the docking of the tail of a horse, or any other surgical procedure so declared under s 16.

39. The Act also states, in s 2(1) that a "controlled surgical procedure" includes the develvetting of a deer, and any other procedure so declared under s 16. A "controlled surgical procedure" can still be carried out by the owner of an animal, or an employee of the owner who is certified to have "the relevant expertise, practical experience, drugs, equipment and accommodation to perform the procedure competently": s 18. Anaesthetic or pain relief is not mandatory.

40. The welfare codes do not deal adequately with painful husbandry practices either. It is of concern that practices that could be categorised as "high impact" or "very high impact" in a research/testing context are permitted to be carried out routinely on farms all over New Zealand.

41. This should now be taken out of NAWAC’s and the Minister’s hands, and the Act should be amended expressly to ban or restrict the offending practices.

Practices that should be banned:
42. It is submitted that the following practices cause undue suffering with no compensatory welfare benefits and should be banned:

- Mulesing\(^{21}\) (already discussed above);

- Docking of the tail of any animal other than a lamb or sheep, except where considered necessary by a veterinarian for the treatment of a health problem. The Act currently classifies the tail docking of a horse as a restricted surgical procedure, and that would need to be amended to a ban. The NZVA supports this, as well as a ban on docking of cow tails and dog tails;

- Induced moulting of poultry;

- Dubbing of poultry. This is the removal of the comb, and in some cases the wattles and earlobes, from roosters. The NZVA submits that this should be a significant surgical procedure. SAFE considers the practice to be unnecessary and prefers a total ban;

- Induction of any dairy cow to manipulate calving patterns, or for any other reason, except where considered necessary by a veterinarian for the treatment of a health problem. Currently the Dairy Cattle Code requires that any inductions be carried out under the direct supervision of a veterinarian, but does not impose any further restrictions.

- The boiling alive by any person of crabs, rock lobsters and crayfish. Currently this prohibition only applies to commercial operators.

**Practices that should be deemed to be “restricted surgical practices”**

43. It is submitted that, in addition to the debarking of a dog and declawing of a cat, the following practices should also expressly be deemed in the Act to be “restricted surgical procedures”. They would then be subject to the basic safeguards in s 17 that follow from that categorisation, namely performance by or under direct supervision of a veterinarian, and appropriate use of general or local anaesthetic and pain relief:

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\(^{21}\) The NZ merino industry apparently decided that this should cease by December 2010, but it should be expressly banned.
- Desexing (by castration or speying) of an animal of any age by any means;

- De-horning;

- Disbudding;

- Develvetling. The Act currently categorises this as a controlled surgical procedure. It should be reclassified as a restricted surgical procedure;

- Induction of a dairy cow carried out solely for treatment of a health problem (induction being otherwise banned);

- Tail docking of a lamb or sheep.

- Tusk trimming on boars;

- The collection and transplant of embryos in pastoral animals;

- Laparoscopic artificial insemination of deer. In relation to sheep, it is noted that the NZVA regards status as a controlled surgical procedure as being adequate.

- Rectal examination in horses;

- Liver biopsies;

- Caslick’s procedure, a surgical procedure undertaken on horses;

- Removal of dew claws in dogs;

- Tooth extraction;
Enforcement of the Act:

44. SAFE has a number of concerns regarding the Act's provisions for prosecuting offenders.

Courts are not imposing sufficiently severe penalties

45. The Act still does not provide sufficiently severe maximum sentences, despite recent amendments to upgrade penalties. But in addition, the Courts have not been imposing sentences that sufficiently reflect the gravity of the offending or the need for deterrence. Judges are simply not giving effect to the legislative intention or adapting sufficiently to the new regime under the Act. In the 12 years since the Act came into force, the longest prison sentence imposed for an animal welfare offence was one year. This was for a prolonged and brutal attack on a dog that received widespread media attention.22 The sentence was reduced to 10 months on appeal when it was held that not enough attention had been given to the offender's age, immaturity, naivety and lack of previous convictions.

46. A person who shot a cat with a crossbow in suburban house was fined $500 and ordered to pay $1030 in costs. Rural enforcement is even more lax. MAF has stated on a number of occasions that it considers prosecution to be a "last resort". A Rotorua farmer was visited in June 2007 after a complaint was made. Dead and starving cattle were found. Formal notices were issued throughout July and August. More dead and starving cattle were found. In September of that year, MAF obtained a temporary enforcement order directing the farmer to comply with the instructions given by MAF investigators. Only when repeated orders were breached did a prosecution ensue. The farmer was sentenced to 250 hours community service for convictions on multiple counts of ill-treatment of animals.23 As discussed in paragraph 17(c) above, figures for 2008, 2009, 2010 and 2011 indicate that very few complaints result in prosecutions.

Infringement notices

47. The ability to issue infringement notices is very limited. Under s 161 an infringement notice may only be issued for an "infringement offence". Section 2(1) defines an "infringement offence":

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22 Rachel Grunwell, New Zealand Herald, 4 October 2009, "Dog killer tops annual list of shame".
(a) An offence against s 36(2), failing to inspect traps or to attend properly to the
care of, or to kill, trapped animals; or s 157(4), failing to give an inspector details
of name and address, or verification of those details, or providing false
particulars.

(b) Any infringement offence specified in any regulations made under the Act. SAFE
is not aware of any regulation specifying such an offence.

48. It would assist in the prosecution of offences, by reducing costs, simplifying
procedures, if infringement notices could be issued in a broader range of
circumstances. This would require the creation of new infringement offences.

**Legal status of codes of welfare**

49. The legal status accorded to codes of welfare does not go far enough. Codes of
welfare are not independently enforceable. A breach of a minimum standard is not of
itself an offence against the Act. Instead, the Act provides that a failure to comply with
a minimum standard may be rebuttable evidence of an offence under the Act. Doubts
on the part of enforcement agencies as to whether the non-compliance will be
regarded as sufficient evidence of commission of an offence often discourages the
bringing of prosecutions.

**Proposals:**

50. It is submitted that the following should be considered as part of the review of the Act:

(a) Providing express guidelines and sentencing principles for Judges to ensure
that they impose appropriate levels of penalty. Judges have demonstrated a
distinct reluctance to do so.

(b) Making more offences "strict liability" and simplifying the Court's procedures for
prosecutions so that the processes are less burdensome and costly. The high
standard of proof required to be met in criminal prosecutions makes successful
prosecutions difficult to achieve, especially given the limited resources available.
(c) Creating new infringement offences, provided that this does not unduly compromise the severity of penalty appropriate for the conduct.

(d) Amending s 127(6) of the Act to allow for easier disposal of, or housing options for, seized animals. Currently, seized animals must be cared for by the SPCA until such time as they are forfeited or a Court order is obtained for their disposal.

(e) Making the codes of welfare directly enforceable as regulations, so that breach of a minimum standard would, of itself, constitute an offence under the Act. The breach will still, of course, also constitute evidence of a breach of one or more of the existing offence provisions.
NAEAC / use of animals in research, testing and teaching

51. The number, and level of suffering, of animals used in research, testing and teaching (together “research”) is of significant concern. NAEAC’s 2010 Report, published in September 2011, states that in 2010 a total of 242,149 animals were used in research. Of those animals, 20,772 experienced “high impact” or “very high impact” on the 5 point grading scale. The 2009 Report, states that in 2009 297,111 animals were used in research, and 25,738 of those experienced “high impact” or a “very high impact”. In 2008 the numbers were 341,520 and 21,233 respectively.

52. This research was all approved under Part 6 of the Act, which provides a regulatory process for sanctioning manipulations that may cause pain or distress -- conduct that would otherwise constitute an offence under Part 1 or 2 of the Act. Because of this, it is most important that Part 6 contains adequate safeguards.

53. The regulatory framework in Part 6 is, broadly, as follows. A person who uses animals in research must hold a code of ethical conduct approved by the Director-General in consultation with NAEAC. Each code holder must establish and maintain an animal ethics committee (“AEC”). The AECs are responsible for approving individual research projects, monitoring compliance with approval conditions, and dealing with the renewal, suspension, revocation or amendment of approvals. Independent reviews of each code holder and AEC must be conducted by independent reviewers accredited by the Director-General. These reviews effectively take place once every 5 years, with the first review within 2 years of initial approval of the code. The independent reviewers (who currently number 6) must send copies of their reports to the Director-General and to NAEAC. The Minister also has power under s 117 to commission an independent review if there are reasonable grounds to believe that a code holder or AEC is not complying with the Act, the regulations, or the relevant code.

54. The main functions of NAEAC, set out in s 63, include: advising the Minister on ethical issues and animal welfare issues arising from research; making recommendations to the Director-General concerning the approval, amendment, suspension or revocation of codes of ethical conduct; recommending to the Director-General appointments of accredited reviewers; and considering the reports of independent reviewers. NAEAC as such plays no direct role in the approval or monitoring of individual projects but only provides general information and advice to AECs.
55. Although Part 6 enacts a seemingly comprehensive regulatory framework, it contains insufficient controls. The NZVA has, in its interim submission dated 13 April 2012 (particularly the attached letter from Dr John Schofield, Director of Animal Welfare at Otago University), recommended a number of reforms. SAFE agrees that those reforms are needed, but submits that they are not sufficient. SAFE has the following concerns about the present Part 6 regime.

Lack of independence

56. There are insufficient safeguards to ensure independence at every stage of the regulatory ‘chain’. In particular:

(a) Part 6, along with the rest of the Act, is administered by MPI. In addition, the Minister and the Director-General exercise significant statutory discretionary powers under Part 6. The inevitable conflict inherent in animal welfare being under the jurisdiction of MPI has already been discussed above. That is heightened still further in the case of animal research. Of the 5 categories of research listed in s 80, all 5 of them may involve research projects in which MPI has an interest. In relation to some categories, for example s80(1)(a)(iv) “the production and productivity of animals”, the conflict is immediately obvious. This further underlines the need for an independent commission, headed by its own commissioner and chief executive.

(b) Like NAWAC, NAEAC makes recommendations to the Minister, and to the Director-General, and is dependent on MPI for secretariat and other assistance. This structure places NAEAC in a difficult position, in terms of maintaining its independence from MPI. The proposed new commission would remedy that.

(c) In relation to the AECs, Part 6, s 101, contains a number of requirements as to membership, designed to ensure their independence from the code holder. However, because there is no specified maximum number of members, code holders are able to populate their AECs with sufficient compliant members if they wish. Decisions are by majority vote. “Outside” members may potentially be subject to pressure. The AECs exercise significant powers under Part 6. They decide what projects will be permitted. They are the ones at the coalface, with arguably the most control over what may or may not be done to individual
animals. Their membership and operation needs to be much more tightly regulated.

(d) An accredited reviewer may be any natural person who meets the requirements of s 109(2). This includes the person's "ability to maintain an appropriate degree of impartiality and independence in conducting reviews". NAEAC's report states that there are currently 6 reviewers. A very small number. Of those six, four work for AsureQuality Ltd, a derivative of the former MAF, and provider of food safety and biosecurity services to the food and primary production sectors. A fifth is with Landcare Research NZ Ltd, a Crown Research Institute. Both AsureQuality and Landcare are also current code holders. How can these reviewers be sufficiently independent?

NAEAC has inadequate resources

57. NAEAC has insufficient funding and resources to enable effective performance of its important functions under Part 6. In its 2010 Report, published in September 2011, NAEAC discloses that its members received a total of $49,050 in payment of fees (at the same rates as NAWAC). Even allowing for 2 members not accepting fees, this indicates a very small amount of time and resources allocated to NAEAC's work. As stated, the Committee's secretariat and other support is provided by MPI. This comes out of MPI's small animal welfare budget. The submissions made above relating to the funding, resourcing, appointment, and structure of NAWAC apply equally to NAEAC.

Lack of rigorous mandatory criteria for research approvals

58. Sections 80(1)(a) & (b) and (2)(a) & (b) set out in detail the purposes of Part 6 in relation to the use of any animal in research. These purposes have not, however, been translated into mandatory criteria that must be met by code holders before approvals are granted. Rather, it is left to the Director-General, NAEAC, and AECs to take account of these purposes, in their discretion, in exercising their various broad powers to approve codes and projects. Contrast the position of non-human hominids, where many of the s 80 purposes (including those in s 80(1)(c)) appear as express restrictions in s 85(5). For example, s 85(5)(b) states that the Director -General may not grant research approval "unless he or she is satisfied" that the benefits of the research are outweighed by the likely harm to the hominid.
59. Further, nowhere is there a clear statement that a purpose of Part 6 is to ensure that *no animal is used in research if alternative methods of research not involving animals are available*. Sections 80(2)(b)(iii) & (iv) do not go far enough. This should also be a mandatory criteria for the grant of any approval. Otherwise there is too much risk of animals being manipulated and killed unnecessarily.

60. The need for robust, mandatory statutory criteria is especially important given the lack of transparency of decision-making under Part 6, discussed below.

*Lack of disclosure/accountability*

61. Other than some very general descriptions and data in NAEAC’s annual reports, this area of regulation is shrouded in secrecy. There is no public disclosure of the approved codes of ethical conduct,\(^24\) the nature of the individual research projects conducted, their alleged utility and validity, the nature of the suffering endured by the animals involved, the reasons why it was considered necessary to use animals in the research.\(^25\) Whilst some non-disclosure may be justifiable, the present level of lack of transparency is unacceptable. The Minister, the Director-General, NAWAC, the AECs and independent reviewers all exercise, under Part 6, statutory regulatory powers of a public nature, and are subject to public law obligations. The lack of disclosure surrounding animal research effectively shields them from accountability. It is difficult to think of another regulatory regime in New Zealand that has so little reporting and disclosure. This leaves the regulated activity vulnerable to abuse and non-compliance.

*Insufficient monitoring/inspection*

62. There is inadequate provision in the Act for regular monitoring and inspection of the research projects that are undertaken, and the welfare of the animals used. In particular:

(a) Monitoring is the responsibility of the relevant AEC appointed by the code holder. This monitoring extends only to the “conditions of project approvals” and “animal management practices to ensure compliance with the terms of the code of

\(^{24}\) Only one example of a code, Massey University’s Code of Ethical Conduct for the use of live animals for research, testing and teaching, is on MPI/NAEAC website. It is expressed in very general terms. There is no information regarding the research projects.

\(^{25}\) The Minister, Director-General, and NAEAC are subject to the Official Information Act. AECs are not. Withholding grounds can be expected to be readily invoked.
ethical conduct” (s 99(1)). Further, only a small percentage of projects are monitored. SAFE understands that some AECs monitor only 10% of new projects each year. That means that by far the majority of projects are unmonitored. So if something goes wrong with unmonitored projects who is going to stop the experiments?

(b) The activities of code holders and AECs are only reviewed by the 6 certified reviewers once every 5 years, including within 2 years of a code approval. This infrequency, combined with the limited scope of the reviews, surely makes this an ineffective safeguard?

(c) AECs must keep continual records, and submit annual returns to NAEAC, under the Animal Welfare (Records and Statistics) Regulations 1999. This information is largely data, as reported in NAWAC’s annual reports, but reveals nothing of the real detail of the actual projects and their effects on the animals involved. Thus, not only does NAEAC not have any role in reviewing or auditing the approval and implementation of projects, it does not even have adequate information about what actually goes on.

(d) There is no provision in the Act for regular external monitoring or inspections (including by animal welfare inspectors and independent veterinary surgeons) of research facilities by dedicated animal welfare inspectors.

Proposals:

63. It is submitted that the following changes to the Act, and to Part 6 in particular, are needed:

(a) Responsibility for administering Part 6 of the Act should be taken from MPI, the Minister and the Director-General through the creation of a new, independent, commission as suggested above. NAEAC would make recommendations to the new commissioner and chief executive rather than to the Minister and Director-General. The requirements governing membership of AECs and for appointment of accredited reviewers should be amended to ensure independence.
(b) NAEAC should, in any event, be given additional resources and powers, including, for example: its own secretariat, and changes to its membership and appointments, as proposed for NAWAC.

(c) The “purposes” stated in s 80(1) and (2) should be translated into express mandatory criteria, of which the Director-General and AECs must be “satisfied” before granting approvals for codes of ethical conduct and projects. In addition, s 80 should be amended to state clearly that a purpose of Part 6 is to ensure that no animal is used in research if alternative non-animal methods of research are available. Again, the Director-General and AECs should be required to be “satisfied” that this is the case before granting approvals.

(d) Much more transparency and accountability is required. There should be requirements written into the Act or its regulations for much fuller reporting and disclosure by code holders and AECs of the research that is being carried out on animals, and why. There should be only limited, justifiable, exceptions for withholding information.

(e) NAEAC should be given greater powers to review and audit individual research projects.

(f) Provision should be made for external monitoring and inspection, including by dedicated welfare inspectors and independent veterinary surgeons, of research facilities that use animals. Indeed, regular inspections should be mandatory.

(g) As stated above, SAFE also agrees with the further reforms recommended by the NZVA, but would regard those as being additional to the reforms SAFE has proposed.
Further proposed bans

64. It is submitted that the Act should be amended to ban exports of live animals for slaughter, exotic animals in circuses, cetaceans in captivity, and cosmetic testing on animals. Each of these activities is addressed briefly below. They are discussed more fully in submissions lodged by NZVA and to be lodged by WSPA. SAFE supports those submissions, and further submits that as none of the activities is currently being undertaken in New Zealand (a strong indication of public abhorrence of them), now is the time to impose complete and permanent bans.

Live export for slaughter

65. Since November 2007, the Customs Exports Prohibition (Livestock for Slaughter) Order has been in place. It is a conditional, not total, ban. It prevents live animal exports for slaughter unless the risks to New Zealand’s trade reputation can be adequately managed. Presumably if it is considered by MPI that any such reputational risk can be managed, the prohibition may be lifted.

66. Livestock transported long distances by sea are inevitably and unavoidably exposed to significant suffering, including prolonged confinement, noise, vibration, motion sickness, changes in lighting patterns interfering with circadian rhythms, heat exhaustion, dehydration, injury, and inanition (persistent failure to eat as a result of being moved abruptly from pasture to stored pellets). Many deaths occur on the ships. Live transport is inherently incompatible with the welfare principles in the Act. There are also no guarantees whatsoever that adequate welfare standards will be adhered to in the countries to which the animals are transported. There have been well-publicised instances of animals being treated in a cruel and inhumane way in the country of destination.

67. It is submitted that the present conditional ban be made absolute and permanent. Whilst SAFE’s concern is primarily one of animal welfare, the likely risk to New Zealand’s trade and welfare reputation, if live exports resume, is also an important factor.

Exotic animals in circuses
Recently, the last exotic animal kept in captivity in a New Zealand circus, a 39-year old African elephant, was moved to a private zoo. SAFE advocates a ban on exotic animals being kept in circuses (including travelling menageries). This is in keeping with a strong international trend imposing such bans\textsuperscript{26}, discussed in detail in submissions to be lodged by WSPA.

Some local authorities -- Dunedin and Wellington City Councils -- have imposed local bans on the use of exotic animals in circuses on public land. The Animal Welfare (Circuses) Code of Welfare 2005 also regulates the welfare of circus animals but, like many of the codes, contains a number of minimum standards that contravene the welfare obligations in the Act. The very nature of circuses means it is inevitable that the physical, health and behavioural needs of animals will be significantly compromised. It is submitted that a complete, nationwide, ban on the use of exotic animals in circuses is the only viable option. The Act should be amended accordingly.

**Cetaceans in captivity**

Cetaceans such as dolphins and whales are highly intelligent animals that live in large family groups and have complex social arrangements. New Zealand does not at present hold any cetacean species in captivity, but the practice is not yet prohibited by legislation. It is submitted that the Act should expressly ban the capture, restraint or handling, import to or export from New Zealand, of cetaceans, except in the rare circumstances in which this is judged by expert opinion to be in the best interests of the animal. SAFE agrees with the submissions to be lodged by WSPA on this topic.

**Cosmetic testing on animals**

SAFE submits that New Zealand should follow the EU in banning all cosmetic testing on animals. The EU already bans the testing of cosmetic end products, and a partially-implemented ban on testing cosmetic ingredients will be complete by 2013. Although cosmetic testing is not currently being undertaken in New Zealand, it is not

\textsuperscript{26} As at 20 February 2012 SAFE understands the position to be as follows. Bolivia has imposed a nationwide ban on the use of all animals, both domestic and wild, in circuses. Austria, Bosnia, Croatia, Costa Rica, Peru, Greece, India, Israel, Singapore and now China, have banned nationwide the use of wild circus animals. Hungary, Denmark, Finland Estonia, Sweden, Finland, Poland, Portugal, Czech Republic, India and Taiwan have imposed nationwide bans on the use of certain species in circuses. A number of countries have municipal bans on the use of animals in circuses, including Argentina, Australia, Brazil, Chile, Canada, Ireland, Spain, the UK and USA. Further detail is given by WSPA in its submission.
prohibited. An application for approval for use of animals in such testing could be made under the current provisions of Part 6 of the Act. The Act should therefore be amended to ban the practice.

Conclusion

72. In conclusion, it is submitted that the animal welfare regime is in need of immediate and significant change. As stated above, SAFE presents these submissions as interim submissions. Despite the lack of any meaningful consultation as yet with interested parties, SAFE understands that MPI intends to release its public discussion documents as soon as August or September. SAFE will, if necessary, provide a further submission once MPI's actual proposals are known.

Dated 19 June 2012.

Submission by Safely Graze Animal Welfare Trust.

We have read the Interim Submission on Behalf of SAFE, 19/6/12 and concur with all its points. We have also read the MPI Proposals of Points to be Amended.

We would like to comment on the following points in SAFE's submission, and the MPI Proposals.

1). We agree that the Animal Welfare Act should be administered by an independent specialist commissioner because of the conflict of interest in the Ministry of Primary Industries between increased export earnings etc and animal welfare issues. We agree that animals need their own independent voice, a voice also independent of NAWAC and NAEAC, and SPCA, especially SPCA, which is too close to MPI in its inspectorate etc, and can misuse its monopoly of power over people and animals.

2). Concerning, Point 1.2 of the MPI proposals, it is not good to have guidelines that have no effect. We agree that there should be a separate process to develop regulations that can be enforced. NAWAC should be more than an advisory body only. The codes that allow 'exceptional circumstances', where certain farming practices are outside peoples' general obligation to care properly for their animals' needs, (eg: with battery hens pigs, circuses, commercial slaughter, including bobby calves), should be brought under strict regulations. The transition period allowed for change is too long.

3). Point 1.2 mentions that animals in the circumstances in Para 2 above, are legislated for under a different process, and it is intended to simplify and improve this process. When will this happen ?, as it is an hypocrisy to have a different rule for certain animals or circuses, zoos etc.

4). Point 2.2 mentions that the care of dairy animals etc, is "out of the scope" of the proposals. This is not good enough. Rodeos are also out of the scope of the proposals. When will the cruelty of straps being tied around the horse's genitals to hurt it and make it jump, be stopped?

5). Point 3.1 mentions people's "obligation to meet their animals' needs"! It is an hypocrisy, eg: for bobby calves to be outside this rule, and for them to sometimes be left unfed and in the stock crate at the gate for days, awaiting transport to be killed. These calves just want and need their mothers, and should be grown on for sale eg: for charities such as LH groups, instead of being killed at 4 days old.

6). Point 3.2 mentions compassion, and says that some people would not exploit animals in any way at all.
   We are without compassion in our treatment of animals.
   Many people are vegetarians or vegans, and would be against animal exploitation.
   If we were compassionate we would not allow factory farming. There is endless suffering in battery cages for hens, pigs especially, and for dairy cows under cover, as is proposed.

7). Point 3.2 also says that "all experiences are important to the animal"! In the example of bobby calves having the experience of dying in agony at 4 days old,
this remark could be seen as an hypocrisy, as all the calves want is their mothers. Bobby calves are seen as worthless, and therefore are one of the most vulnerable and forgotten types of animals; and nobody cares about experiences that are so important to the young calves. What is reasonable and necessary in the case of breeding bobby calves? The misuse of calves, who are being born in order for people to get milk from the cows, - milk to which many humans are allergic, and which can cause type 2 diabetes?, or decent animal welfare standards of care?

8). Points 3.41, 3.42 Implementation. The Government should work with SPCA AND other animal welfare groups: because SPCA has too big a monopoly, and sometimes has power and control issues. Government priorities should be - such things as ensuring that farmers provide shade and shelter, and preparing for adverse events, such as having Civil Defence plans for animals, eg: in earthquakes: and replacing, reducing or refining the use of animals in research etc, should also be a priority.

9). Point 3.4. Not aiming to lift animal welfare standards from their current settings, is a missed opportunity especially for bobby calves etc, as they need more than minimum standards for their care. There is no need to exempt religious practices for an indefinite period, as it is an hypocrisy to allow Halal killing especially if animals are not stunned. It is an hypocrisy to pray over an animal, and then subject it to an agonising death. Solomon said, in The Book of Proverbs Chapter 21, verse 3, "to do righteousness and justice is more acceptable to the Lord than sacrifice." In Chapter 12 of The Book of Proverbs, he said in verse 3, "A righteous man has regard for the life of his beast, but the mercy of the wicked is cruel". God wouldn't approve of such cruelty and greed, especially as humans are not built to be meat eaters, and have to cook meat to make it palatable at all. Many people are vegetarian/vegan for ethical, animal welfare, religious and health reasons. Non-stunned animals take more that 15 seconds to lose consciousness when their throats are cut, therefore they die in agony, especially if an inexperienced killer cannot cut jugular veins properly, to make death quick.

10). Point 3.5 mentions "roles and responsibilities". We feel that the Government should help educate the public on such things as pet population control, to help prevent the killing fields of unwanted pets at Christmas: and that the animal users' Industry should help educate the public to build stockmanship skills, eg: with the care of bobby calves, and with providing shelter for all animals.

11). Point 3.5 Live export of animals should not be allowed, especially as animals are required for killing by people of other religions, (inside New Zealand too), and overseas, who do not know how to kill humanely and quickly. Also, sheep in full wool etc, (as is required by these people), suffer horribly in transit and on arrival in hot countries. "Is it worth the inhumanity to these sheep to travel halfway around the world and to be slaughtered in the most diabolical conditions what are possible anywhere on earth? We are selling out our laws and our morals. We don't care, out of sight, out of mind, as long as our dollars are made." Ross McLachlan, NZ Listener, 5.3.86, WN SPCA

12). 3.5 and 3.6. Vets should be encouraged to educate people on how to look after animals. There is a need more pet-population control education and a need for cut price neutering campaigns to start from July onwards, to prevent the killing-fields of Christmas.
13). 4.4. Here there is a problem: "practicality and economic impact" means animal welfare standards versus money. "Codes are being used to indefinitely extend practices that would otherwise be considered breaches of the act." Yes, this is definitely true." Exceptional circumstances" are not good enough.

14). 4.42. needs to make the above more explicit. "Transition times" and "genuinely exceptional circumstances", as a religious excuse, is not good enough. Cruelty continues in the name of religion and money, and this is not Godly.

15). 4.4 Criteria. "Exceptional circumstances", is a cop out, for religious /cultural practices also, and for exemptions.

16). 4.6. "urgent decisions" allowing for live exports, are not good enough. Customs orders and animal welfare standards are better when put together. Mandatory rules and a set of compliance tools are a good idea.

17). 4.64. It is not good to allow sheep in full wool, to be exported to hot countries to die in agony.

18). 4.71. surgery option 2. We approve of answers, 4.4.1,4.4.4.1,1,1,1,1,1,4.1.

19). 4.8.2. definition of manipulation. It IS good to make a moral judgement on justification of a practice.

20). 4.10.1. our answer is "no" to the drowning of land animals.

21). 4.11. The MPI needs the ability to suspend SPCA inspectors etc for complaint or suspected misconduct. This needs clarifying, as there is a recent local example of an SPCA inspector killing large numbers of cats with the veterinary drug and a hammer, and a captive-bolt "humane" killer. He needed to be suspended and sacked, but no-one in SPCA would front up to the numerous complaints about this man, or the other inspector there, who has bullied two women on their own on separate life-style blocks, breaching privacy and confidentiality in making unfounded aspersions about one woman, nearly driving her to suicide. He said to her and the other woman, that he could come onto their properties anytime and do what he liked, when he clearly had no grounds to get a court order to enter, and should not be able to do what he liked under the Act. MPI just let the SPCA Inspectorate investigate the first woman's issue, and did nothing when the inspectorate lobbed off the first issue with excuses. The inspector had to back off when the second woman's partner read the Act to him, and the first woman trespassed the inspector from her property: but there needs to be a better complaint process, where inspectors are suspended while under proper investigation, an dismissed for misconduct and misuse of power.

22). The minimum standards of the codes of welfare should be updated to remove cruel farming practices, and this should be done by NAWAC and an independent body, with the wording of the codes being made more specific. New Zealand is the bleakest and meanist place for not providing any shelter for farm animals, and , allowing lambing etc to go on in bad winter weather does not give New Zealand a good farming reputation. It should be made known through codes of
welfare, that goats and young animals do not have water-and wind-proof coats and therefore they require shelters.

23). The present minimum standards for factory farming of eg: poultry and pigs, are a disgrace to our society and should be upgraded. Factory farming of dairy cows would be an appalling innovation, especially since the farming of calves for "white veal", i.e. created through the calves not seeing sunlight, still occurs. We are also not happy with the care and transport of 4 day old bobby calves who suffer terribly in transport and slaughter. Pregnant cows are sometimes induced so that all calves are born around the same time, and induced calves are born under-developed and unable to breathe, this should not be allowed.

1). OTHER POINTS in the Animal Welfare Proposals

2) Further protection is needed for wild animals, especially from cruel killing methods such as the use of gin traps for possums. Possums may be unwanted animals, but they are an example of yet another frightened animal just trying to get through the day, and they deserve a humane death. Painful husbandry practices are still unaddressed, particularly mulesing of sheep, and should be banned.

3) Punishments for offences are not stiff enough. Offenders should be made to clean dirt trays etc at animal shelters, to see the effects of previous cruelty on rescued animals. There is a truck that goes around our area fortnightly, collecting goats for slaughter, and pregnant nannies drop kids in the truck, and the kids are hit on the head. This should not be happening.

4) There should be more funding made available for more inspectors and more animal welfare education, especially on the basic requirements of care for each type of animal, and on pet population control, for example about contraceptive medications, and that pets don't need to have a first litter, - they are not better animals for it, and few offspring can find homes: and cats can come into season from July to May and 3 times a year and from 4 months old. There should also be funding available for independent education and neuter/spay clinics to prevent the killing fields of Christmas.

5) Restricted surgical procedures should be done under supervision of a veterinary surgeon and be included in an adequate code of animal welfare.

6) Animals should not be used in research, testing and teaching, as other, better, and more accurate methods are available. There should be more accountability for methods used, especially in government departments and private enterprises such as in the beagle farm in our area.

7) Wild animals should not be kept confined long-term, but facilities for providing temporary sanctuary and education, should be encouraged by the use of better codes of practice. Cosmetic testing on animals should be specifically banned in NZ, as other and better methods are available.

8) In Option 2, where it says that not all standards could or should be translated into mandatory regulations, does that apply to - "religious" killing methods, or home-killing too? There should be mandatory regulations for "religious" or home killings of meat
animals.

9) Option 3 is preferred, but guidelines are not enough, as they have no legal effect, eg: to stop international trade, in live animal exports etc. There should be better regulations for transport and slaughter, eg: for bobby calves, pregnant goats etc. The example shown for the care of farm animals, especially pigs, is a good example. Mandatory versus voluntary rules are not good enough, the transition periods are too long.

10) In the SAFE Questions 1 - 4, there is a missed opportunity to prevent the use of intensive dairy units, and the issue of pet-population control is not addressed. Also, the views for example, of people who are vegetarian/vegan etc., are not heeded.

11) Questions 5 - 7. Animal Welfare Guidelines are not enforceable: therefore there is no reduction in cruelty and the numbers of unwanted pets.

12) Question 14, more animal welfare groups should be given a voice on these issues.

13) Concerning the Animal Welfare Code, we are worried that there is not an animal welfare code for the making of TV programmes in NZ, and for TV programmes made by New Zealand programme-makers overseas. In the USA, The Humane Society of the United States supervises the making of all films, but nothing like that happens in New Zealand. Breaches of broadcasting standards relate only to what may offend viewers: not to how it may cause distress to animals, such as in the following programmes. Pet mice being killed by wekas on "Birdlands", crayfish being chased around the Masterchief studio before being boiled alive, a dancer on Intrepid Journeys taking ages to kill a rooster with a bow and arrow and leaving the rooster wounded and in agony, and a New Zealand boy being made to show what a man he was in USA, by cutting a pig's throat inefficiently in "World's Strictest Parents", or "Country Calender" filming a wild pig being taken by farmbike to the bottom of a hill and released, so that the farm dogs could chase it up hill and kill it. Some appalling hunting practices are allowed on other TV programmes also, and tormenting animals for sport should be stopped by a decent code of animal welfare.

14) Meaningful discussion on all these issues, should be allowed for with all interested parties, and changes for the better, for all types of animals, should be implemented as soon as possible.
Submission on Animal Welfare Matters
MPI Discussion Paper 2012/07
28 September 2012

1. Thank you for the opportunity to comment on the Animal Welfare Strategy and amendments to the Animal Welfare Act 1999. This submission is made by the New Zealand Seafood Industry Council (SeaFIC) on behalf of the commercial seafood industry.

2. The New Zealand Seafood Industry Council Ltd (SeaFIC) is the primary umbrella organisation representing the generic interests of all sectors of the New Zealand seafood industry, a sector that includes quota owners, fishers, marine farmers, seafood processors, wholesalers, retailers, and exporters. SeaFIC is owned by 22 shareholders – each of which represents a particular sector of the seafood industry. Our shareholders collectively represent around 95% of the seafood industry by value. SeaFIC plays a leading role in developing and presenting the seafood industry’s response on all legislative and regulatory proposals affecting the industry.

3. As a sector involved in the capture of wild fish and the farming of fish, the seafood sector has a strong interest in this consultation and the issue of animal welfare overall. While we generally support the tenor of the Bill in making animal welfare standards more explicit and more enforceable, we are also concerned that the processes involved in legislating those standards pose a number of new risks to our sector.

The New Zealand Animal Welfare Strategy

4. As a nation primarily dependent on deriving its wealth from exporting animal products, New Zealand needs to ensure that it maintains a reputation of quality animal welfare. The absence of an explicit strategy, standards and a compliance regime places that reputation at risk. Whether real or perceived, any attack on animal welfare can expose New Zealand to trade impacts. For that reason, the sector supports the general thrust of the proposal to develop and implement an animal welfare strategy.

5. We support the
   a) three values that are proposed to underpin the strategy, viz:
      i. It matters how animals are treated;
      ii. We have responsibilities towards animals; and
      iii. Using animals is acceptable as long as it is humane.
   b) The approaches to improve animal welfare listed in section 3.4, viz.
      i. Better planning;
ii. Better skills, practices, science and technology;
iii. Clear rules and sanctions; and

c) The roles and responsibilities as set out in section 3.5 of the proposal;
d) The implementation process set out in Section 3.6; and
e) The priorities as set out in section 3.7.

6. While there are undoubted benefits in making the strategy, standards and outcomes more explicit, there is a significant risk in that opening the process of developing standards and regulations to a more consultative process, the emphasis will shift from standards based on “practicality” and “economic impact” to more closely align to the emotive animal welfare protection views promulgated by some animal rights groups. The politicising of the development process brings risks of major swings in emphasis as governments and regulators become influenced by political pressure rather than economic realities and rational decision making based on empirical evidence.

Proposal to Amend the Animal Welfare Act 1999

7. The consultation contains three options for the structure of the Act:
a) Keep codes of welfare and add regulations;
b) Keep codes of welfare but make minimum standards directly enforceable; or
c) Replace codes of welfare with a mix of regulations and guidelines.

8. While there are substantive differences between (1) and either of (2) or (3), it is not obvious as to the substantive difference in outcome between (2) and (3). Under both options (2) and (3), the translation of minimum standards into mandatory regulations would be equally difficult. Neither residual content of the codes of welfare nor the guidelines would have legal effect but would equally provide information and promote good practice. Either option would allow industry or sector groups to develop their own guidance. The mandatory standards to be included under option (2) could as a matter of regular process be subject to Cabinet scrutiny to emulate the process under option (3).

9. We are not persuaded by the statement on page 14 under Option (3) that Cabinet “is well placed to resolve the value conflicts and the balance between multiple outcomes that are inherent in animal welfare decisions”. Our experience has been that when confronted by such issues, Cabinet decision-making is open to a significant degree of political influence, compromising the rational, evidence-based economic orientation that we would prefer to see in such decisions. It is for that reason that we do not support option (3).

10. Our preference for option (2) would be to make the Ministry for Primary Industries responsible for the preparation of codes of welfare and the National Animal Welfare Advisory Committee acting as an independent advisor to the Ministry and Cabinet. Cabinet’s role would effectively be reduced to resolving issues of market failure which may only be resolved by a regulatory intervention. The Ministry would develop codes of welfare based on empirical evidence of the impact on the animals concerned and consistent with the Ministry’s objective to achieve sustainable growth. NAWAC would operate as the auditor or expert advisor to the Ministry and Cabinet if necessary. The Ministry would, through its normal activity, have the necessary contacts and skills to ensure proper engagement with
appropriate stakeholders and provide a properly focused response to the need for regulatory intervention.

11. Implementing such a structure would entail fewer resources than the Ministry's preferred option. Insofar as option (2) is concerned, the necessary elements to form the minimum standards could be extracted from the existing codes of welfare and the remaining elements of the code be left in place for later review. Option (3) would require a total rewriting of the codes of welfare to either a regulatory or guideline format as appropriate. We see that process being unnecessarily torturous.

12. The seafood industry has a fundamental problem with the existing nature of the codes of welfare applicable to its area. The codes are written as input controls which in some cases are poorly written and have had problems when amendments to incorporate new technology or new practices are appropriate. We believe that the strategy should be to develop output standards except where regulatory interventions are necessary. Those regulations could be input standards. Input controls would be reserved primarily for industry best practice guidelines and codes of practice. We see a role for NAWAC to review and audit the industry codes and guidelines to ensure they achieve the output standards sought by the strategy. In the event that industry sought not to achieve those objectives, regulation would be available as an intervention to impose input controls on the recalcitrant industry.

13. We believe that the above structure has a better alignment with the principles of good government.

14. Whatever option is chosen, it is necessary that industry be heavily engaged in the process to develop and prepare any regulatory interventions. The seafood industry enjoys a productive relationship with many parts of MPI in preparing interventions but has in the past been the recipient of ill-prepared regulations where industry input has been overlooked or not sought. We seek to prevent any re-occurrences of that failure in the future.

Criteria to Apply in Developing Animal Welfare Standards

15. We concur with the proposal to import “practicality” and “economic impact” into the explicit mandatory considerations in any assessment to recommend minimum standards. We also suggest that standards be based on empirical evidence and rationality, and explicitly avoid emotional, anthropogenic projection. Given an objective that the standards should not compromise the ability of the nation to prosper, the importation of these considerations will serve to balance the competing forces involved in such decisions. At present, these considerations are only explicitly imported into decision-making in respect of exceptional circumstances unless included in public submissions. We cannot support the continuation of the status quo as it results in unbalanced decision-making and incentivises use of the exceptional circumstances facility to achieve a balanced outcome.

16. We believe that the import of “practicality” and “economic impact” factors into primary mandatory considerations will reduce the need to use the exceptional circumstances provision. We concur with the proposal to replace the exceptional circumstances provision with two explicit grounds:
   a) A transitional phase between two welfare standards or practices; and
   b) The exemption for genuinely exceptional circumstances.
17. In the case of exceptional circumstances, we submit that the decision making body should be required to justify its desire to use the exceptional circumstance provision to ensure that the provision is restricted in application. Whether or not the exemption should be periodically reviewed or not would be appropriate to the nature of the reasons giving rise to the need for an exemption. For example, a religious practice would not require periodic review. We are unable to think of any other circumstances that are not transitional or are not religious or cultural and that would otherwise warrant a periodic review. However in the event that there are such instances, they should be subject to periodic review.

Role of the National Animal Welfare Advisory Committee

18. The seafood sector believes there are sound reasons to continue the National Animal Welfare Advisory Committee, albeit with a change in role and focus.

19. Our view is that MPI should be the primary agent for the development of standards and codes of welfare. NAWAC should provide expert advisory services to MPI if requested by MPI in the development of standards and codes of welfare. NAWC has significant experience in the preparation and evaluation of standards and while it in our submission it would be removed from the primary role of drafting and preparing such material, it would serve an equally necessary function in respect of auditing the effectiveness and need for such standards.

20. We believe that, while the current membership structure covers most of the knowledge areas necessary for its role, we consider it is deficient generally in respect of food safety knowledge and occasionally in respect of specialist knowledge for sectors where animal welfare is not within normal parameters. In the latter instances, we believe the additional knowledge should be obtained by the temporary appointment of a person (or persons) with appropriate specialist knowledge to the membership. They would not be a permanent member of the NAWAC membership and their temporary membership would only be in respect of the particular application for which they were appointed. We submit that this approach would better serve the seafood sector than relying solely on the current membership's generalist knowledge.

Live Animal Exports

21. Section 48 (1) of the Animal Welfare Act provides the Director General with the power to exempt certain species or animals from requiring an animal welfare export certificate if satisfied the risks faced by the animal in respect of the journey are minimal.

22. The seafood sector currently exports animals in a live but not active state, in particular rock lobster, bivalve molluscan shellfish and eels. The export of live seafood is currently exempt from the need for an animal welfare export certificate under section 48(1).

23. We are concerned that any amendment to the Act to introduce minimum standards for the welfare of exported animals may inadvertently set standards which are clearly inappropriate for live seafood. Our preference to ensure that the export of live seafood is not prejudiced by regulatory amendments is to seek a provision in Part 3 of the Act that specifically exempts live seafood from the provisions applying to the export of live animals. Such a provision already exists in section 177 which excludes wild fish from wild animals held in captivity for killing.
Significant Surgical Procedures

24. This aspect is not relevant to the seafood sector and accordingly we make no comment.

Reporting Animals Killed for Research, Testing and Teaching

25. We note that this section refers only to the reporting of animals killed and does not propose changes to the underlying conditions and provisions applying to such practices.

26. We see no reason not to include such deaths in official statistics.

Enforcement Tools

27. The development of an animal welfare strategy and regulatory framework to give effect to that strategy requires the establishment of an effective and supportive compliance regime to enforce standards. There is no justification for the absence of such a regime.

28. MPI has identified that the process to apply penalties is unnecessarily cumbersome and that the maximum infringement fee is too low to be an effective measure. We support the proposals to address these shortcomings.

Other Offences

29. Section 177 of the Animal Welfare Act excludes animals caught by fishing from the provisions relating to the killing of a captured animal in a manner that does not cause unnecessary pain or distress. We consider that the provision remains appropriate for the capture of wild fish and seek the continuation of the provision.

Technical Amendment

30. Grass carp and silver carp are currently defined as pests. In the event that they are farmed, the obligation to kill an animal so that the animal does not suffer unreasonable or unnecessary pain or distress would not apply to these animals. It is proposed to amend the Act such that any farmed bony fish are subject to section 12(c) of the Animal Welfare Act, making it an offence to kill farmed fish in such a manner that the fish suffer unreasonable or unnecessary pain or distress.

31. We concur with the need for consistency in the application of the Act in respect of all farmed fish.
From:
Sent: Wednesday, 19 September 2012 9:56 p.m.
To: Animal Welfare Submissions
Subject: aw submission

Please find attached submission on wolf tooth extraction. I would like the opportunity to speak to the committee from a clients perspective, an animal lover and owner/trainer of large numbers of horses including those sent to us for last chance rehabilitation... This proposal is unfounded and I suspect driven largely by very greedy and jealous vets who want the money for themselves but fail to realise they largely lack the training or experience required to do the work themselves...

Horse dental welfare is much better served by trained speciality equine dentists than general practitioners who have little understanding of the physiology or importance of correct dental balance.

Thanks

Showtym Sport Horses

8/11/2012
Submission – Animal Welfare Act review

The Society of Dairy Cattle Veterinarians (special interest branch of the NZVA) welcomes the opportunity to comment on the structural changes to the Animal Welfare Act. The DCV represents over 530 registered veterinarians with a special interest in dairy cattle in New Zealand.

The comments represented here are made with the aim of improving animal welfare in New Zealand...at the coalface! The comments are also written by a veterinarian who has experience in the frustration of animal welfare prosecutions and the resource and time that it takes.

1. Do you think MPI's proposed instant fines are appropriate for certain offences where it is clear that an offence has been committed?

Yes

2. Do you agree with MPI proposing that deliberately killing a land animal by drowning will be an offence (Nb. this will include rodents, pets, livestock etc)?

Yes

3. Do you agree with MPI proposing that stockmanship and handling standards should be set in regulation?

Yes

Comment: Have issues with how this would be achieved. There is a subset of farmers in the community whose ‘low cost’ mentality extends to the quality for farm staff and the education inputs they put into them. Stockmanship skills will come with an employer mentality of investing time, effort and money into staff development.

4. Do you think the export of live animals for slaughter should be allowed?

Yes

5. Do you agree with export criteria, for live animal export approval, being made harder by using enforceable regulations?

Yes

Comment: The animal welfare issues that have occurred in the past for NZ and Australian shipments have been unforeseen – delays in docking, animal health issues etc. The risk is that you will always have these and no amount of regulation can mitigate these things occurring. It will always be a significant animal welfare/public perception risk.
6. Who should be able to carry out certain surgical procedures?

The key for the following table is:

A. Not significant: Can be carried out by anyone

B. Significant: May only be carried out by a veterinarian or a person who is acting under the direct supervision of a veterinarian and is being taught veterinary science at a undergraduate level

C. Restricted: For significant surgical procedures, they may only be carried out if the procedure is in the animal's interests and using appropriate pain relief

D. Controlled: For significant surgical procedures, they may also be carried out by the owner of an animal, or their employee with written veterinary approval.

E. Prohibited: No one may carry out the procedure.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Level of control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mulesing</td>
<td>E</td>
</tr>
<tr>
<td>Tail docking of horses</td>
<td>E</td>
</tr>
<tr>
<td>Laparoscopic artificial insemination of sheep &amp; goats</td>
<td>B</td>
</tr>
<tr>
<td>Surgical embryo collection in sheep &amp; deer</td>
<td>B</td>
</tr>
<tr>
<td>Tail docking of dogs</td>
<td>E – unnecessary, for cosmetic tradition only</td>
</tr>
<tr>
<td>Tail shortening of cows</td>
<td>E – it is totally unnecessary</td>
</tr>
<tr>
<td>De-sexing of companion animals</td>
<td>B</td>
</tr>
<tr>
<td>De-sexing of horses, llamas &amp; alpacas</td>
<td>B</td>
</tr>
<tr>
<td>Tooth extraction in horses and companion animals</td>
<td>B</td>
</tr>
<tr>
<td>Liver biopsy</td>
<td>B</td>
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<tr>
<td>Removal of dew claws in dogs</td>
<td>B</td>
</tr>
<tr>
<td>Caslick's procedure (surgery to vulva of horses)</td>
<td>B</td>
</tr>
<tr>
<td>Dubbing (removal of comb from poultry)</td>
<td>B</td>
</tr>
<tr>
<td>Surgical castration of livestock on farm within certain age limits and under certain conditions</td>
<td>B – surgically entering a body cavity</td>
</tr>
</tbody>
</table>
Comments to above:

Any time the body cavity is entered the welfare of an animal is put at risk. We feel that any surgical procedure involving any of the body cavities (especially, thorax, abdomen (including scrotum)) should be at the very least directly overseen by a NZ recognized veterinarian. With regard to castration – there are alternatives and choices and if an animal owner chooses to ignore these or plead ignorance then the responsibility should still lie with them that it is done properly and the animals welfare takes priority over “economics or practicality”.

Within the dairy industry there are an increasing number of foreign veterinarians working on farms. If their qualification is not recognised in NZ then it is because their training and/or ethics is not deemed to be of the same standard as what is required here to act as a veterinarian. It MUST be very clear what procedures they are allowed to participate in and that it MUST be under the direct supervision of a NZ registered veterinarian (present and able to intervene immediately).

We run the real risk of a layer of para-veterinarians developing that could perform procedures that should be done by a recognised veterinarian (especially in isolated areas). Farm owners need to be aware of their responsibilities to animal welfare and the involvement of a qualified veterinarian as required.

General comments:

Whilst I understand that “economic impact and practicality” can be considered we need to be very careful that this does not become the unskilled/poor farmers excuse to poor welfare outcomes. In my role as a rural practitioner I have vast experience of problems on lower performing farms always being “somebody elses” fault. When in actual fact better planning and farm management would have prevented it in the first place. Farmers need to be reminded that the responsibility still lies with them.

Whilst DCV agrees with the concept of enforceable regulations and instant fines our concern would be what happens to all the other issues and standards as outlined in the code of welfare. We understand that enforceable regulations would be few in number and wonder if what is left over in the code then becomes largely forgotten about and deemed of lesser importance when in fact it is equally important if not more so to a larger number of animals ( the greater majority lying outside that of the most serious offending).

In summary the Dairy Cattle Veterinarians would like to offer its support to the ongoing development of these ideas and would request that we are consulted on the regulations that are specific to veterinarians and dairy cattle in New Zealand. As a profession we are in contact with what happens on farm (the coalface) and in a role where we are regularly looked to guide farmers and their staff on appropriate handling and care of animals. We see the potential for adverse issues developing in the dairy industry where economics can sometimes have more of an influence than animal welfare - whether this be due to higher debt levels and budgetary constraints, the volatility of dairy farm income, or due to the high use of unskilled/cheaper labour on some farms.

Yours faithfully

Immediate past President of DCV/NZVA
Submission to MPI Discussion Paper No: 2012/7

Proposals for a New Zealand Animal Welfare Strategy and amendments to the Animal Welfare Act 1999

The Southland Rural Support Trust (SRST) makes the following submissions with regard to Sections 4.3 Standards of Care and Conduct Toward Animals, and 4.9 Enforcement Tools.

"The purpose of the SRST is to assist the rural community of the Southland region of New Zealand to restore their livelihoods in the wake of an adverse event affecting them, with a primary focus on human and animal welfare."

Consequently, we have an interest in the proposed changes to the Animal Welfare Act 1999.

Q5. Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines?

and...

Q27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?

Our concern is that a fining system may exacerbate stressful situations that would be better handled by consultation and negotiation. We feel the involvement of support people and the chance to seek a second opinion of a deemed infringement, prior to any fines being imposed, could help achieve a positive outcome, and reduce the likelihood of a confrontational situation arising.

We see the preferred method as MPI and support people working together in the first instance to find a successful outcome to any on-farm animal welfare situation.

Should this process be unsuccessful, then a graduated system of directly enforceable standards and guidelines could have merit over prosecution, provided it is administered in a fair and reasonable manner.
We suggest the following:

1. Monitoring and enforcement of infringements be carried out under a strict Code of Practice to ensure even-handedness in approach to any enforceable situation and interpretation of guidelines.

2. Prior to an infringement notice being issued:
   - Animal owners need to be informed of their available support networks.
   - Animal owners are visited by an enforcement officer and a suitable support person.
   - A suitable time period be given for an opportunity to rectify the situation.

3. An animal owner, in conjunction with any support person, will have the right to appeal an infringement notice.

Q6 & Q28. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

We see a risk of alienation and/or confrontation between animal owners and enforcement officers if infringement notices or fines are administered with no prior consultation or contact with the animal owner, or if similar situations are handled in different ways, or if different enforcement officers operate to differing standards.

Properly administered, we can see how the proposal may assist in rectifying a non-prosecutable offence.

Animal welfare inspectors already have the discretion to involve a support agency, which may negate the need for this new proposal.
Q7 & Q29. What impact will the proposed changes have on you and/or your organisation or sector?

The proposed changes could result in an increased workload for the SRST, a voluntary organization with limited resources, should we be called upon as a support agency for an animal owner who has been identified as having an animal welfare issue.

We believe care needs to be taken to ensure that any enforcement does not become a confrontational situation. Stress can be a driving force behind animal welfare issues. Confrontation may simply add to this stress, and consequently the workload for support agencies.

Rural Support
Southland Rural Support Trust

Contact:

Lindsay Wright
Chairman

lindsaywright@woosh.co.nz
ph:03 202-7774    m:027 222-3125
The South Island Boxer Club Inc.

25th September 2012

Animal Welfare Strategy and Legislation Review
Ministry for Primary Industries
P O Box 2526
Wellington 6140


The South Island Boxer Club Inc supports the New Zealand Council of Docked Breeds and the New Zealand Kennel Club in their Submissions.

On behalf of the majority of the membership of The South Island Boxer Club we also wish to have our Submission considered for the proposed Strategy and possible Amendments to the Animal Welfare Act 1999 and make my submission on the following Issue.

Issue 6. Significant surgical procedures

Tail Docking of dogs

We believe that that the Banding of Dogs' Tails should continue to be considered a Controlled Procedure and that only persons who are members of an Accredited Banding Scheme are permitted to band puppies.

The reasons for this are as follows

1. International Pressure

Since the adoption of the Code in 2010, only 1 further country in the World has subsequently banned the docking of dogs' tails – India in 2011.

The list supplied in the NZVA's Submission on this review is not factual and includes several countries where no ban exists, but the local Veterinary Associations have forbid its members to dock.

The list also fails to acknowledge that several of the countries listed have breed "exceptions" to the ban – which recognises that some breeds are susceptible to tail damage and simply
enforces our observations that early prevention by banding at the appropriate age eliminates amputation as an adult.

2. Previous Decisions on Tail Docking

While reviewing the Code of Welfare (Dogs) during 2009/2010 the NAWAC Committee concluded the following (From the NAWAC Committee report published on the Ministry of Primary Industries Website).

"The National Animal Welfare Advisory Committee (NAWAC) considered, on the available evidence, that the amount of pain that a dog experiences when its tail is docked is reduced if the puppy is of a very young age. At this age, some of the connections in the puppy's brain which carry signals to let the puppy experience pain are not yet fully developed and scientific evidence suggests that, at this age, the puppy does not experience pain as it would if the tail was removed in an older dog."

And

"The National Animal Welfare Advisory Committee (NAWAC) is aware of one accredited tail banding scheme that is managed by the New Zealand Kennel Club. More information is available on their website. Anyone can establish an accreditation scheme, as long as it meets the requirements in the code of welfare."

Since this Code came into force, there has been no new scientific evidence provided that disproves these findings!

Does the current NAWAC consider the past Committee were erroneous in its findings?

3. The right to continually oppose Government and Public opinion

Do the current NAWAC Committee, the NZVA and the SPCA consider they can ignore the findings of the three bodies that have reviewed this topic three times in less than 15 years?

This has been reviewed by the Government on 2 occasions via the Animal Welfare Act and then via a proposed amendment to the Act, then its own Committee as recently as 2010?

All of these process/reviews included public consultation and considered public opinion.

To date, the NZVA have NEVER canvassed its members on the issue of tail docking!

The NZVA and SPCA are heavily financed in their ongoing opposition to this argument. This makes it incredibly hard for the breeders and owners of traditionally docked breeds to continually fight back. The NZCDB is a not for profit organisation funded solely by subscription and run by volunteers, people who are passionate about protecting their dogs and the heritage behind them. Despite the cost and time involved, the NZCDB, the NZKC and the hundreds of breeders and thousands of owners of Traditionally Docked Breed, pledge to our dogs to continue this fight!

Vets have the ability to understand the internal working of the dogs – breeders have the responsibility of ensuring they are fit for purpose on the outside – and they take this responsibility extremely seriously.
As guardians of their chosen breeds, breeders have the responsibility of maintaining the breeds against the individual blueprint of the breed – the Kennel Club Breed Standards. The Breed Standards capture and record the requirements of the ideal specimen and have been written as the benchmark of the breeds for in excess of 100 years.

4. Insufficient trial period of Tail Banding Panel

The Accredited Banders Scheme has been established and only NZKC Registered litters of traditionally docked breeds are to be banded. The Council considers that by restricting banding to being performed by accredited people only, we are being proactive in animal welfare and building a fence at the top of the cliff, as opposed to being the ambulance at the bottom.

Only two years since the enforcement of the Code is not sufficient time to be able to accurately gauge if the panel is operating successfully and that only NZKC Registered, traditionally docked dogs are being banded.

5. Just how prevalent are incidents of incorrect Tail Docking?

It has always been the contention of the NZCDB that sufficient processes already exist to deal with people who inflict puppies to incorrect tail docking procedures. Relying on media reports as our only source of information, since the inception of the Code of Welfare (Dogs) we are only aware of 1 case that may progress to prosecution.

If the incidence is as prevalent as NZVA and SPCA claim – then why are we not seeing any prosecutions?

If the incidence is as prevalent as NZVA and SPCA claim – then why do they not publish this information and include it on their Submission?

We can tell you why not......because it does not exist!!!

If, as we claim, it is NOT prevalent – then why do we need to consider further legislation when quite simply, any dog docked by a person other than a vet or an Accredited Bander is currently identifiable and able to be punished?

6. Consequences of Banding performed by non-accredited people

NZCDB fully endorse the punishment of any persons operating outside of the requirements of the Code of Welfare.

7. Pressure to remove dogs tails by Breed Standards

The Breed standards do not include a disqualification for traditionally docked dogs, which are exhibited with tails! This position is what we fight for with the most passion – the "Freedom of Choice".

What the NZVA continually fail to acknowledge is that the breed standards contain the characteristics of each breed and make very clear delineations about the tail set and type for each breed. The breed characteristics are set in stone because they are the minimum (or maximum) an individual dog needs to complete the task he was bred for.

The boxer is a short coated, very active, exuberant dog that thrives on being part of his human family, making them an ideal indoor breed. Left with a tail that has little or no
protection of hair or flesh will undoubtedly result in severe injury from furniture & doors & an outdoor existence.

There are thousands of examples of why each dog differs from the next and each is recorded in the Breed Standards.

That is why we claim that Vets are the masters of the internal working of the dog, dog breeders are the experts on why they were developed to look like they do.

8. No Scientific Evidence

Since before a Public Members Bill was introduced in Parliament by Hamilton East MP Diane Yates in 2004, there has been no scientific evidence produced that puppies feel pain while being banded.

The Private Members Bill relied heavily on a Review released in 2003, BENNET, P.C. & PERINI E. (2003) Tail Docking in dogs; a review of the issues. Australian Veterinary Journal 81, 208-218. This was simply a review of the available publications to date. There was no new scientific evidence that proved that the docking of dogs' tails was painful.

During the consultation on the Bill by the Government Administration Select Committee, then again during the process around the format of the Code of Welfare (Dogs), it was accepted that much of this publication based the conclusions on experiments performed on animals other than dogs.

These studies made no reference to the fact that the animals used in these experiments had functioning nervous systems from the time of birth or within the few hours after birth. Conversely, it is universally accepted that if under 5 days of age, a puppy's nervous system is not developed sufficiently to allow it to feel pain when a tail was banded.

9. Refuting claims of pain

The proposed amendment is based on an emotive issue that conjures up pictures of cute little puppies bleeding & in pain, undergoing a gory ritual of tail removal. Carried out by accredited tail banders for caring, educated NZKC registered breeders, tail banding is a preventative measure to promote a healthy, happy life for the pups & their future lives as adult dogs.

As further proof of the lack of pain, a DVD produced by The Council of Docked Breeds in the United Kingdom is available at this link

http://www.cdb.org/video/video.htm

The DVD shows the banding of a litter of Boxer puppies while suckling from their mother. There is no blood, no discomfort and no evidence of pain. If you require a copy of this DVD the New Zealand Council of Docked Breeds has copies available and will post them if required. Contact Betty Parker (bettyparker@clear.net.nz, or Karen McIntyre kazie@xtra.co.nz) if you require a copy.
10. Refuting NZVA Claims

In its Submission NZVA continue to use over-emotive opinions or theories, as opposed to sound scientific based proof. Without this evidence — then that is simply all the statements are — opinions and theories. Hardly sound building blocks for a robust Animal Welfare system!

This over-emotive propaganda is also used in articles or publications circulated to its own members.

Claims of ethical considerations, complications, impairment of normal function, pain — there is no supporting evidence and the statements are full of over-dramatised comments.

As an example Appendix 6, c. Impairment of normal function

...Children especially rely on a dog’s tail as a guide to “reading” canine body language.

This statement has never been supported by statistics that might indicate more children are being bitten by docked dogs.

NZVA submit that there are many complications arising from docking, and then by its own admission confirm research in this area is sparse. If neuroma—-s were present we would see associate responses from dogs whilst being examined in the ring, competing or working, while under examination at the vet clinic as well as in their normal life. We can find nowhere where this has been documented.

For NZVA to prove its case as a professional body, surely it has the responsibility to effect change using a strong science base to its submission and not just unsubstantiated opinions?

NZVA submit on chronic pain, and then again go on to admit there is little research on dogs in this area.

Docked dogs successfully herd, hunt and trial as part of their daily lives! They are successful in the Show, Obedience and Agility rings and are valuable contributors to the Service Industries as Police, Guide and Rescue dogs. Balance is not compromised by not having a tail.

The balance argument from both the NZVA and SPCA looses creditability when you consider several of the docked breeds carry a bobtail gene and are born without tails. Even if not in use today as working dogs, they were more than capable of performing the task they were bred for when they were in use, let us not forget this is the sole reason the breed was developed.

This is why we constantly refer to the “Tradition” of docking. Yes it is historical but it is based on experience and breeds that were traditionally docked were most often docked to prevent damage.

There are many successful greyhounds which continue to win races with docked tails, removed as result of having sustained damage that refused to heal. Information from a Vet Clinic in Christchurch confirms that on average it would be required to complete an amputation of a damaged tail from an adult greyhound at least once a week!

The NZVA submit that convenience is a reason for docking. The NZCDB abhors the continued use of this emotive statement!

The NZVA submit that docking of dogs’ tails may damage New Zealand’s reputation. It does however remain silent on procedures such as inducing aborting calves that are nearly
full term in the name of milk production. It remains silent on other procedures that DO inflict pain yet are only classified as Restricted such as deer velvetting!

The NZVA submit that hygiene is a justification for tail docking - and this sets us along side lambs and other primary industry animals. While the NZCDB is aware this is a commonly held theory, they have never supported this claim. Interestingly though - if it is acknowledged that lambs do feel pain from docking - can we expect to see a Submission from NZVA that the docking of lambs, piglets or calves tails becomes classified as a Surgical Procedure?

NZVA go on to submit on Freedom of Choice with even more emotive statements by comparing the cropping of dogs ears in with the banding of dogs tails. Cropping takes place at a much later age and requires pain relief intervention and post-operative care. Yes there are breeders who will refuse to leave tails on their puppies - just as there are breeders who want to (and do) leave them on. Any purchaser who receives negative comments from a breeder also has the "Freedom of Choice" to find another breeder.

NZVA also submit on Prevention of damage and yet again emotively wish us to compare tail banding to removing any other part of the dog in case it gets damaged!

This from a professional science based organisation.....?

In Conclusion

In May 2010, a study was published in the Veterinary Record, Risk factors for tail injuries in dogs in Great Britain, (Diesel et al, 2010).

By the authors own admission this study had weaknesses in their work. For example "The study was started approximately one year after the introduction of the new legislation, and therefore it may be too soon to detect differences in the risks of tail injury due to the differences in legislation".

Amongst many other issues with the study, it is important to note that the study reported 281 dogs with damaged tails were presented from just 52 veterinary practices. According to the RCVS there are 3000 verified vet practices in the UK. If these 52 were representative of them all, then circa 16,000 dogs would have suffered tail injuries in the UK for that 12-month period and circa 5,000 would have undergone adult tail amputation! Even if it were 50% of this figure, this is nothing short of a scandal, resulting from an Act of Parliament that was designed to protect the welfare of animals.

One other conclusion of the study has been reported thus
"The final multivariable risk factor model showed that being a working dog was not a major risk factor for tail injury, and other factors, including breed characteristics and level of activity of dogs, were more important than work itself"

This conclusion has been the claim of the NZCDB since the beginning of our campaign!

Sincerely

thank you for taking the time to read this letter
Submission on Animal Welfare Matters

About the submitter
My name is [redacted] and I am a qualified medical practitioner and co-owner and director of South Pacific Sera Limited which bleeds live animals for the production of blood products such as sterile defibrinated blood for microbiology, serum for production of human and animal vaccines and biopharmaceuticals in cell culture and polyclonal antiserum for use in research, diagnostics and therapeutics.

South Pacific Sera is licenced as a Biological Byproducts Processing Facility and is also licenced by the ACVM, Medsafe and the FDA. South Pacific Sera has its own Animal Ethics Committee under the Act which oversees animal manipulations — principally immunisation of animals and blood collection.

South Pacific Sera operates from our family farm, employs fifty people and was incorporated in 1988 giving us approximately 20 years of experience in this field. South Pacific Sera does not kill animals for its production purposes.

I am also the National Vice President of Federated Farmers New Zealand, a member of the Science and Innovation (as chairman) Boards of MBIE and a trustee of the Aoraki Development Business and Tourism (Timaru’s economic development agency).

I submitted on the original Animal Welfare Act as the chairman of Biotenz (the biotechnology industry organisation). This is a personal submission based on my experience as a Code Holder of a Code of Conduct under the Act.

My submission is as follows:

Questions on reporting of animals killed for research, testing or teaching

Q24. Do you agree that the number of animals killed humanely for research, testing and teaching should be included in official statistics?

1. While reporting the deaths of animals may appear useful on the surface my view is that it will not give a reasonable indication of animals used in this way and will be fraught with definition and consistency problems.

2. However I do think that AECs should be sure that animals used in RS&T institutions are killed humanely and therefore should have the authority to determine methods of euthanasia used by the researchers. I understand this is already the case even if not required in law.

3. Many animals used for RST are farm animals which have gone through approved slaughter houses. For example organs used in school teaching. There is no intention to include these animals in statistics which I consider appropriate.
4. Including hunting and trapping (both legal under other legislation) may mean that samples taken from these animals will be subject to AEC deliberation and may lead the AEC into areas of debate (e.g. the cost benefit of hunting or trapping for pleasure or profit). Which require a national conversation and shouldn’t be left to AECs to agonise over. In other words we may get into the absurd situation where institutions would not even be able to collect samples from hunters because the method of killing was not approved by the AEC. Therefore the use of tissue from dead animals should at the least be restricted to those situations where the animals are killed for the sole reason of tissue collection (or other research). The collection of tissues from already dead animals killed legally under other laws should be excluded.

5. Legislation should aim for simplicity, consistency and accuracy. MAF made a strong argument for excluding animals which are killed in the statistics. MPI should revisit these reasons.

Q25. What impact, including costs, would the requirement to report animals killed for use in research, teaching, and testing have on you or your organisation?

1. Institutions may struggle with the definitions. There may be extra cost if animals are sent to slaughter houses.

2. Institutions which do not use AECs may need to use one. AEC applications engender considerable cost on institutions.

3. More animals may be killed if tissues cannot be collected from animals killed for other reasons because the method of killing (e.g. hunting or trapping) is not acceptable to an ethics committee.

Q26. Can you think of any other changes that would improve the system for regulating animals used in research, testing and teaching?

I am aware of submissions in the following areas and wish to make comment on them:

A) Inclusion of the genetic manipulation of embryos into the definition of manipulation.

1. It should be noted that most, if not all, animals which are produced through genetic modification are manipulated in some way – either the egg donor or the resulting animal – and therefore the projects are already vetted by Animal Ethics Committees.

2. If MPI is to move in this direction it should consider the definition very carefully to avoid in vitro experimentation being inadvertently caught.

B) Breeding of genetically modified animals as disease models.
1. If MPI is considering this proposal it should also include the breeding of naturally occurring animal disease models as the animal welfare issues are no different. MPI should then consider the definition of a disease model as this may become problematic – is this an animal which has symptoms and signs of disease and if so how severe should they be? Is a particular mutation enough even if not symptomatic?

C) Limiting numbers of animals bred in institutions

1. I am unaware that there is a problem with institutions overbreeding animals for no reason.

2. MPI should consider the reduced flexibility and cost to the research community if restriction of animal numbers leads to delays in projects and how this might apply to farm animals.

3. There are sound economic reasons to maintain colonies as small as possible and this should provide sufficient incentive.

My view is that the law as it stands is very clear cut. The changes proposed risk creating significant grey areas resulting in considerable uncertainty. It is difficult to see how the proposals will provide the greater clarity sort.
Submission
by the
*Society for the Prevention of Cruelty to Animals*
Auckland Inspectorate
on the
*Animal Welfare Act Review*
September 2012

SPCAs around the world all strive for the same goal – a world without animal cruelty. The Society for the Prevention of Cruelty to Animals Auckland (SPCA Auckland), serves the Auckland region – from Wellsford to Port Waikato. Our Inspectorate has five full time inspectors as well as a Chief Inspector. Over 3000 complaints involving thousands
of animals were investigated by the Inspectorate last year. We serve both rural areas involving large animals kept as pets or produced as stock, as well as densely populated urban areas with mainly small domestic companion animals. Auckland is the largest Inspectorate in New Zealand and is thus faced with a large variety of mitigation needs, enforcement issues and prosecution situations. We endeavour to prevent and mitigate the suffering of animals by working within communities using a variety of methods, ranging from communication and minor assistance, in the form of education and support, to legal intervention and sheltering including seizure of animals and prosecution. However, our ability to mitigate the suffering of animals and to enforce the law is dependant on The Animal Welfare Act 1999, (the Act), being clear and complete in both its intent and its wording. The responsibilities and duties of care it requires of owners and the limits it places on what is acceptable treatment of animals give us the ability to defend protect and speak for the animals of this country and our region in particular. The SPCA Auckland Inspectorate, (The Inspectorate), take our responsibility very seriously, as we face the reality of animal welfare issues every day. These issues fall upon a spectrum from ignorance and a lack of resources that put people and thus animals in difficult situations to blatant cruelty that can sometimes shock even experienced Inspectors. As knowledge regarding animal welfare grows and public opinions shift in regards to acceptable practices involving animals, it is important that the Act is kept current, applicable and readily enforceable. The Inspectors who deal daily with the Act in our efforts on behalf of animal welfare should be considered highly qualified to both comment on its shortcomings and recommend needed refinements and additions to improve it.

With this in mind the SPCA Auckland Inspectorate respectfully submits the following:

1) We fully endorse and support the submission made by the Royal New Zealand Society for the Prevention of Cruelty to Animals, (RNZSPCA), review of the Animal Welfare Act. Their submission is comprehensive in its review of the entire act and the many areas that require change, addition, deletion and increased detail. We also reiterate their passion and commitment to providing an Act that best serves the animals of Aotearoa.

2) Our submission will focus its content on specific areas of the Act that in our particular experience have proven to be lacking in scope or in detail or in some cases to be missing altogether. We will also comment on areas covered by the RNZSPCA submission which we feel are especially vital to be included in this review and give additional input from our specific experiences.

Proposal of Changing Codes of Welfare to Enforceable Regulations

3) The Auckland Inspectorate is strongly in favour of the move away from Codes of Welfare, (Codes) and towards regulations that are enforceable. Though there is some good information within the Codes their lack of enforceability and specifics
has left them more frustrating then helpful. Currently, the “minimum standards” tend to be vague and undefinable using words like “sufficient” and “adequate” while the more specific criteria is relegated to the “recommended best practice” sections.

4) Our concern regarding the change to regulations is twofold, one regarding content and one regarding process.

5) In regards to content, regulations have great potential to increase the ability to enforce easily identifiable welfare standards and to provide important tools for gaining compliance and taking action against offending. However, the Inspectorate feels strongly that if their language is vague or incomplete or if they do not cover all categories of animals or all areas of concern they may be lawful but not useful. We strongly agree with the RNZSPCA that the regulations when made must be prescriptive requirements rather than broad, outcome based standards as has been suggested.

6) The Inspectorate’s concern regarding process is associated with the current process of Code writing which we believe has been heavily influenced by parties with a vested interest in the industry but not always the welfare of animals. We believe that a change to regulations will only be helpful if there is real consultation with all parties involved and that animal welfare groups are an important part of this process. The Inspectorate feels strongly that the SPCA, as Animal Welfare enforcement leaders, are given a strong voice for detailed input to the actual writing of the regulations. We stand committed to providing that input based on our knowledge and experience in the field to create regulatory tools that will raise the level of welfare for all animals.

Enforcement Tools

7) The Inspectorate agrees strongly with the proposal that there is a need for a wider range of enforcement tool to utilise in the field. In our experience, there are many situations of low to moderate offending when prosecution is not deemed to be the most appropriate option or the process of prosecution is untenable. However, these cases often involve repeat offenders or areas of offence that require a stronger approach then merely education or support.

8) Currently Inspectors are limited to either verbal or written warnings as alternatives to prosecution of the offender. These warnings can be an effective action however, they are sometimes blatantly ignored or even seen as a challenge by the offender who realises they are not legally binding. In these instances, the ability to issue an instant fine based on an infringement could be a
valuable tool for the Inspector in achieving compliance and therefore improved welfare standards for the animal.

9) We therefore support the proposal that additional infringement offences be added to the Act and that the maximum fine for infringements be raised from $200 to $1,000.

10) We would however strongly submit that the consultation process for establishing what those infringements will be is comprehensive and involve detailed input from the RNZSPCA and all SPCA Inspectorates.

11) The Inspectorate also wishes to express concern that these infringements neither dilute the current offences of the Act nor create unmanageable burdens on the Society in the form of book keeping and debt collection. We submit that resources are made available for both administering this area and providing legal alternatives for the animals should the infringements fail to bring about compliance.

Amendment to s136 for Animals Unable to be Seized but Requiring Mitigation

12) A growing problem in the urban and semi rural areas that we have responsibility for is that of "lifestyle blocks" or "hobby farms". When animal welfare is compromised in these types of set ups it often becomes a serious issue for both the animals and the SPCA. Seizing stock animals, (cattle, horses, sheep, goats, pigs, etc.), in numbers ranging from 20-50, or more is simply beyond our capability. We do not have the space to hold them and the costs involved in transporting, feeding and veterinary care can be enormous.

13) Currently our options in these situations are limited to seizure or issuance of a S130 Notice. These notices are issued to the owner based on veterinary and farm consultant reports that instruct the owner or person in charge to feed out specified amounts of appropriate feed per day or to destock. For many this is incentive enough to initiate responsible care of their animals.

14) However, if owners refuse to comply with the notice we are bound to feed the stock ourselves to prevent or mitigate the animals suffering. In these situations the animals may not have been seized under sections 127 or 131 and therefore can not be disposed of pursuant to section 136 of the Act.

15) When their care is logistically and financially an unreasonable burden on the SPCA/Inspectorate alternative options must be available and readily accessible. SPCA Auckland submits that section 136 of the Act be amended to include such a provision. This amendment would allow an application for a prompt court order
requiring immediate removal and disposal through stock agents of all affected stock and all monies held in trust until further court process determines an outcome.

**Abandoned Animals Seized with Unknown/ Un-contactable Owners**

16) SPCA Auckland frequently responds to complaints regarding animals abandoned when people leave their residence and their animal(s) behind. Our usual process is to leave notices several days in a row at the residence while feeding the animals daily, on site, if they are in acceptable body condition and adequately sheltered. Often, we get absolutely no response from the owner and eventually need to seize the animal due to the owner’s lack of responsibility and care.

17) The seized animal(s) are brought to the SPCA for care whereupon the process begins to find/contact the owner. This process can take weeks, months, or be simply impossible to do. Currently, once seized, we cannot rehome or otherwise dispose of the animal because it is presumed to be owned, without going through the long process of filing for a disposal order through the court. However, if the animal comes in stray, though it is also presumed to be owned, we can act after 7 days. Likewise, owned animals seized by the council under the dog control act are also only required to be held for 7 days.

18) Due to the fact that we leave notices with contact details and make other exhaustive efforts to find the owner it seems reasonable that a timeframe should be given where the animal automatically becomes forfeited to the SPCA. This would put the onus of responsibility on the owner to be caring for their animal or in contact with the person they put “in charge” of caring for their animal within a reasonable period of time. The SPCA Auckland Inspectorate suggest that period of time be 14 days from the time of seizure.

**Defining Terms Integral to Animal Welfare and the Act**

19) Section 2 of the Act lists definitions and interpretations of important words and phrases used within the act. These definitions assist us to understand and use the act by clarifying their meaning within the Act.

20) A good example of this is the term “ill-treat”. Due to varied beliefs about animals and their treatment it is important that this phrase is clearly defined to determine appropriateness and fulfilment of the elements of offences that contain it.

21) Likewise it is essential that legal definitions for the terms “Wilful” and “Reckless” be added to the Act. These terms have caused a great deal of confusion to
Inspectors and this could lead to charges in section 28 and 28A being under utilized or misused when prosecuting.

22) Additionally, the terms "Pain" and "Distress" should be similarly defined. Listing definitions for these words which are all integral parts of the Act would bring clarity for Inspectors, lawyers and judges as well as the public.

23) One of the most frequent complaints that the Auckland Inspectorate receives is regarding animals receiving insufficient exercise. While this is usually in reference to tethered dogs it can be applied to any tethered or caged animal.

24) Despite scientific knowledge of the need animals have for exercise the word "exercise" is not mentioned in the Act let alone defined in section 2. Under the definition in section 4 of physical, health, and behavioural needs, (c) opportunity to display normal patterns of behaviour is the only reference to movement and possibly exercise though this is not clearly identified.

25) Due to the variance of animals covered in the Act, specifics regarding exercise should be appropriately mandated within the regulations proposed for individual animal groups or their situations. However, exercise, in general, as an important component of the physical, health and behavioural needs of all animals should be specifically listed, required and defined within the Act.

26) Similarly to the above the term "Shelter" as listed in S4 when defining the physical, health and behaviour needs of animals; (b) adequate shelter: is too limited and lacks definition. We believe it should be replace by “appropriate living conditions” and defined as; those conditions which provide the animal with a clean and secure environment in which the animal can exercise natural behaviours, and be protected from adverse weather effects and predation. These “appropriate living conditions” could then be specifically laid out in the regulations as appropriate to the species and situation.

Animals at Risk of Harm as a Part of Family Violence

27) The SPCA Auckland Inspectorate is represented on the New Zealand “First Strike” Campaign and as such is a part of the Memorandum of understanding (MOU) between the RNZSPCA and Child Youth and Family Services, (CYFS), and the pending MOU between the RNZSPCA and The National Collective of Independent Women’s Refuges.

28) “First Strike” is a national campaign of persons who are both representative of organisations and individuals who share the common goals of: encouraging public and professional awareness of the links between cruelty to humans and
animals (all being forms of family violence); and encouraging information sharing across professional bodies and agencies to create the most effective response to family violence issues.

29) It is the campaign's belief that education regarding the link between these forms of violence, information sharing between professionals and collaboration across agencies involved in anti-violence work are the first steps in addressing violence in families, (including violence towards animals). The MOU's are designed to encourage cooperation between these groups.

30) In the recent "Pets as Pawns" research done in New Zealand, (Roguski, 2012) over 50% of respondents stated that threats to kill had been made in regards to their animals and more then 36% stated that actual harm or death had occurred as a part of family violence. Additionally, 33% stated that they had stayed in the violent situation due to fear of abuse or harm to their animals. Perpetrators use overt threats and actual harm against animals to gain and maintain control of family members. The threats and actual harm occur both during the relationship and after the relationship has been left.

31) Various methods are used including: normalising violence (by repeated violence against animals) to create fear of the abuser's anger, demonstrations of perverse joy in acts of violence against random animals, cruelty to animals as punishment for perceived lack of compliance or a warning against future lack of compliance, and harm as a show of jealousy for love or affection shown towards anyone other then the perpetrator. Additionally, being forced to perform acts of bestiality as part of family violence, which results in double abuse to the animal and to the partner.

32) These various forms of violence against animals contribute strongly to both delays and barriers in leaving abusive relationships. Additionally, when the relationship is left the animal(s) is often at greater risk of injury or death if it is left behind when subsequent threats and violent acts are used both as a punishment for the partner leaving and as a threat to manipulate them into returning.

33) Especially pertinent to this review, the research in New Zealand showed that cruelty to an animal instead of the partner or children was found to occur in situations where the perpetrator saw it as a means of inflicting violence within the family without fear of police attention or involvement. In this sense police and Animal Welfare Law were perceived as not treating animal cruelty seriously.

34) Currently inspectors executing their powers under s127 and wishing to remove an animal under s127(5) must have reasonable grounds to believe that the either
the animal is being wilfully ill-treatment or that its physical, health and behavioural needs, or the need for veterinary treatment, make it desirable for it to be removed from the property. The current wording of this section is an impediment to an Inspector who believes there is a real threat or risk of harm and wishes to act to prevent actual harm and potentially death from happening to the animal.

35) To clarify that animals can be seized where threats of harm have been made towards them, thereby facilitating the dual purpose of protecting animals from actual violence, (including the possibility of death), and removing barriers to and facilitating helpful intervention in, dangerous Family Violence situations we submit that s127(5) of the Animal Welfare Act 1999 (AWA1999) should be amended to read:

Where an inspector who exercises a power of entry under subsection (1) has reasonable grounds to believe, in respect of any animal found on or in the land, premises, or place or in or on the vehicle, aircraft, or ship, that—

- a) the animal has been wilfully ill-treated contrary to section 28; or
- b) there is a clear risk of imminent harm to that animal; or
- b) a credible threat of harm or death has been made towards that animal; or
  (we believe either of the two b) caveats could be used here)
- c) the physical, health, and behavioural needs of the animal or the need for the animal to receive treatment from a veterinarian make it necessary or desirable to remove the animal from the land, premises, or place or the vehicle, aircraft, or ship,—

the inspector may take and maintain possession of the animal, by force if necessary, and convey the animal to another place.

Powers of Sentencing and Offender Registries

36) Since April the Auckland Inspectorate has had at least 2 cases where groups of children in the 6-10 year old age group participated in purposely abusing animals and in one case causing the animal to be injured so badly it required humane euthanasia.

37) Though the children and their parents were spoken to by an Inspector no action or programmes were available to facilitate the children learning from their actions or to assist them with issues they were facing which may have contributed to their offending.
38] We believe that violent behaviour by young people against animals needs to be addressed promptly as the research shows clearly that this is a strong indicator of further violent action against animals and humans. Provisions should be available as a part of the Act to address children too young to be prosecuted for Animal Welfare offences despite the severity of their violence.

39] Likewise, youth and adult offenders who commit violent acts against animals need to be not only punished but treated, as research shows the likelihood for animal abuse to accelerate and lead to human violence.

40] We submit therefore that the court should be provided with a sentencing option to order those convicted of offences against S28 and S28A, (wilful and reckless ill-treatment of an animal) to undergo psychological counselling.

41] Additionally, to assist with investigations within all family violence sectors, to monitor compliance with disqualification orders and to give the court a clear picture of prior offences, we submit that the “Act” should provide for a national register of individuals found guilty of offences under the “Act”, accessible to members of the police, relevant government agencies, and SPCA Inspectorates.
SUBMISSION BY THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS AUCKLAND INC.

“ANIMAL WELFARE MATTERS”
Proposals for a New Zealand Animal Welfare Strategy and Amendments to the Animal Welfare Act 1999

The following submission on behalf of SPCA Auckland is in response to the Ministry of Primary industries’ Discussion paper 2012/07 “Animal Welfare Matters” and is structured as under:

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1.0  PREAMBLE AND EXECUTIVE SUMMARY

The Animal Welfare Act 1999 is the only legal mechanism available to prevent cruelty to animals and to place a duty of care onto the 'owners' of those animals.

As a law it is one of the most significant as it deals with a unique kind of legal 'property', namely animals, distinguished by the fact that they are animate and can experience pain and distress. Accordingly in considering such laws we must be cognisant at all times of three elements:

- It involves an animal

- It recognises and acknowledges the unique nature of the 'property' in that they are animate (sentient) and capable of feeling

- It affects the relationship between humans and animals.

The significance of these elements is that this law must be resolute in its duty to prevent cruelty, or abuse, to any animal, whatever the species, irrespective of any political or economic reason that may be proffered that will compromise their well-being. There is no place for an animal welfare law that allows any form of animal suffering, be it farmed, in the wild, or companion.

There is also an added gravity that accompanies this animal welfare law, and that has to do with the relationship between humans and animals. We now know, where before we only suspected, that there is an inextricable link between animal cruelty and human violence, and accordingly this legislation must be conscientiously constructed, comprehensive in its protectorship, and rigorous in its enforcement. Its impact on our human communities takes it well beyond a law just for animals.

In the International arena how we handle this challenge to improve our animal welfare laws will be viewed with interest. The reputation of countries is judged by the treatment of its animals, and accordingly this is an opportune moment to undertake a comprehensive review of what is morally right for our animals, and to provide an enviable example of leadership to the global community.

We commend the Ministry of Primary Industries and those associated with it for their proposal of a New Zealand Animal Welfare Strategy, and the likely amendments to the Animal Welfare Act 1999, contained in its comprehensive paper, aptly named 'ANIMAL WELFARE MATTERS'.

It is to be hoped that the significance of that title is born out of a determination to ensure that what follows will live those words, not just mouth them.
The ability to review the Act must be utilised fully and comprehensively, and not superficially or limited in any way. The responsibility for a serious review rests firmly on the shoulders of those undertaking it, and eventually the Parliament, who are entrusted to ensure our animal welfare laws are fair, just, reflect the will of those who administer it and, above all provide the optimum needs all animals desire, and deserve.

We respectfully submit the following proposed amendments to the Animal Welfare Act in summary form, and will be happy to elaborate on them on request.

Sincerely

Executive Director, SPCA Auckland

28 September, 2012
2.0 SIGNIFICANT RECOMMENDATIONS

The following are recommended amendments/additions to the Animal Welfare Act, 1999, proposed by SPCA Auckland.

2.1 DECLARATION OF SENTIENCE IN THE ACT

**Sentience:** early 17th century, from Latin sentient - ‘feeling’ [Oxford Dictionary]

In acknowledging that the Animal Welfare Act is a significant Act in that it involves the protection of animals who are capable of feeling, and possessing a sensitivity to pain and suffering, we submit that declaring the sentient nature of animals from the outset clearly confirms a respect for their feelings.

This declaration not only provides greater legal protection, but by using the term ‘sentience’ signals to all that animals are emotional and feeling beings rather than commodities. This also reinforces the view held by homes housing companion animals that they are ‘one of the family’ (83%, NZCAC Survey, 2011).

We would also recommend that the Domestic Violence Act 1995 be amended to state that animals be included as ‘protected persons’ when protection orders are made.

New Zealand would not be alone in this declaration of sentience as a number of countries have included this in their animal welfare laws, and it is in keeping with the World Society for the Protection of Animals’ (WSPA) Universal Declaration on Animal Welfare, to which New Zealand is a signatory.

**Recommendation:** SPCA Auckland submits that the Animal Welfare Act includes a declaration of sentience after ‘An Act’ to recognise that animals are sentient beings capable of feelings. Further that the definition of ‘animal’ in section 2 be amended to read ‘any sentient member of the animal kingdom’.

*(Refer also submissions from NZCAC, WSPA and NZVA)*

2.2 ‘GUARDIAN’ TO REPLACE ‘OWNER OR PERSON IN CHARGE’

**Guardian:** late middle English – A person who protects or defends something/a person who is legally responsible for the care of [Oxford Dictionary]
Given the definition of ‘guardian’ (as above) versus ‘owner’ (a person who owns something), it is clear that in the context of an Act where a duty of care is placed on an individual to ‘care’ the terminology clearly favours guardian as a desired definition.

By recognising animals as individuals (sentient) rather than an ‘owned’ object this elevates the responsibility for them as well as elevating the public perception of animals as living beings who are dependant for care and protection – the term guardian fully describes this relationship as opposed to animals as ‘things’, ‘objects’ or ‘chattels’ owned by humans.

**Recommendation: SPCA submits that references to ‘owners’ or ‘persons in charge’ of animals in the Act be replaced by ‘guardians’ and this term should be defined in section 2 of the Animal Welfare Act.**

(Refer also: submission from NZCAC and [www.guardiancampaign.com](http://www.guardiancampaign.com))

### 2.3 ENFORCING CODES OF WELFARE STANDARDS AND THE ROLE OF NAWAC

SPCA Auckland feels strongly that the minimum standards contained in the Codes of Welfare should be Regulated Standards and accordingly mandatory. In their present form as guidelines they have no legal effect.

The development of Codes of Welfare is a thorough process involving scientific research, widespread consultation involving numerous practitioners and specialists, and others with authority in the subject. Its flaw lies in being influenced by industry or economic concerns rather than due cognisance to the welfare of the animals affected by the standards. This flaw should be corrected.

The existence of ‘minimum standards, which must be achieved and regulated, coupled with ‘recommended best practices’, does provide a compulsory component as well as an educational device, both of which are valuable when considering the welfare of all species of animals according to their specific and individual needs.

With the stated desire to create an ‘efficient process for developing standards’ the role of the National Animal Welfare Advisory Committee (NAWAC) requires some consideration given its structure, and attachment to a Ministry whose main focus is the promotion of economic growth which naturally attracts industry lobby groups with profit rather than welfare in mind.

Maintaining an independent, well funded committee, charged with the sole purpose of developing Codes of Welfare, to include a wider range of animal advocates on board, and undertaking fully independent research, will result in more welfare orientated regulations.
Recommendation: Minimum standards contained in Codes of Welfare to be regulated standards and accordingly, mandatory, and any breach of such standards shall be considered an offence under the Act.

Such existing minimum standards that compromise the welfare of any animals to be revisited and corrected where applicable, ie Intensive and/or battery farming practices.

Additionally the structure of NAWAC be re-visited to provide a truly independent, well funded committee, to undertake the writing and reviewing of Animal Codes of Welfare.

(Refer also submissions from Royal New Zealand SPCA, NZCAC and NZVA)

2.4 SENTENCING AND INFRINGEMENT OFFENCES

Despite a restructuring of penalties under the Act in 2010 following the Members Bill submitted by Simon Bridges MP, which resulted in increased penalties and the introduction of an additional category of 'reckless ill-treatment', sentencing for animal offences is still abysmally light. It was interesting to note the speed of the revision and the total support of the House for the increase in penalties, sending a clear message that offending against animals is unacceptable. It is still clear that the judiciary has not heard that message.

In Auckland the 'Wellsford case' involving the slaughter of 33 pet dogs, described by the judge as inhumane and bloodthirsty, the perpetrators received six months detention and 300 hours of community work. Such a pitiful sentence was shattering to those inspectors involved in this horrific case and quite rightly drew much public criticism.

More so now that we accept that animal abuse leads to abuse to humans, the need for harsh penalties has never been greater if we are to have an effect on violence in our homes and communities. The judiciary need to understand the seriousness of cruelty to animals and issue appropriate sentences as a message to violent offenders in our community.

With the advent of 'minimum standards' within the Codes of Welfare becoming enforceable under the Act the way is clear for those to become compliance tools with infringement offences which will not require court proceedings but can attract 'instant fines'. In areas such as body condition, feeding, hygiene, containment and shelter, injury, transportation, training and euthanasia which appear as 'minimum standards' in the Code of Welfare for Cats and also Dogs infringement notices could be issued immediately for offences committed in all those issues.
The ability for inspectors to impose a fine as a compliance tool will resolve the many unsatisfactory welfare situations encountered by them, thus improving the animal welfare standards throughout the country. It may well be argued that such a system may help in funding inspector activities at the local level, however this should be a bi-product and not a sole reason to implement it.

**Recommendation:** Auckland SPCA submits that the Act encourage judges to impose more severe penalties in animal cruelty cases either by recognising the severity of such offences or increasing still further the penalties that may be imposed under the Act.

Further that animal cruelty is a serious community issue and judges must recognise the link between animal and human cruelty which should be treated as an aggravating factor under the Sentencing Act 2002.

Additionally that breaches of Minimum Standards contained in a Code of Welfare may receive an infringement notice with a resultant instant fine relative to the offence to a maximum of $1,000.

*(Refer also to submissions from NZCAC, Royal New Zealand SPCA, www.firststrike.org.nz and ‘Pets as Pawns’ research paper)*

2.5 **DISQUALIFICATION AND RECIDIVIST OFFENDERS**

Section 169 of the Animal Welfare Act 1999 provides that the court may disqualify an offender from ‘owning’ or exercising authority over one or more animals following conviction. In the 2010 amendments the minimum review period allowing an application for the renewal of a disqualification order was increased from one to two years, promoting better welfare outcomes by indicating that a longer minimum review period should be imposed for more serious offences.

There is no provision for recidivist offenders affecting farmers with repeat convictions, and individuals who continuously offend, despite previous convictions. We would submit that it should be mandatory for judges to impose a lifetime ban on such offenders.

**Recommendation:** SPCA Auckland submits that section 169 be amended to make it mandatory that judges consider disqualification when sentencing offences under the Act, and that recidivist offenders receive a lifetime ban from caring for, or exercising authority over any animal.

Note – Such an amendment is in line with the purposes of sentencing outlined in Section 7 of the Sentencing Act 2002, namely (f) ‘to deter the offender from committing the same or similar offence’.

*(Refer also to submission from NZCAC)*
2.6 CUSTODY, STRAY TIME AND DISPOSAL

Of major concern to SPCA Auckland are the costs, inconvenience and inability to home animals whilst awaiting the outcome of prosecution proceedings involving them. In one protracted case, still before the courts, a number of animals have been in custody (in foster homes) in the Society's care for over eight years, and in a number of other cases custodial care has run into not months but years.

Whilst there are disposal provisions in the Act, they are not actionable until post trial or hearing, and accordingly the period of time between animal seizure and the substantive trial is unaccounted by current legislation. There is something of a lacuna in the legislation where animals are seized and it is inappropriate to return them to their owner.

We believe the Act should provide a procedure for an inspector to apply to the court for the forfeiture of a seized animal. Grounds to make the application should not be dependent upon the initiation of prosecution proceedings, and the court should be satisfied on the balance of probabilities that the animal’s welfare may be put at risk if returned to the owner. The 'owner's' past conduct in failing to care for the animal in an appropriate manner should be a relevant consideration for the court to have regard to the application.

If this is considered an extreme measure we would submit that the Act should provide powers to the Court to enforce a legislated 'owners' election scheme. Seized animals would be in SPCA care, and following a reasonable period, authorities would assess the viability of a successful prosecution, at which time, should proceedings occur would be lodged. The SPCA would determine that the 'owner' election scheme be invoked entitling the owner to elect one of the following two courses:

- Full and immediate forfeiture of the animal to the SPCA, or
- Agree to pre-trial SPCA custody undertaking to pay nominal weekly fees for the care of the animal/s for the duration of the proceedings.

Failure to comply, and following a series of warnings, forfeiture to the SPCA with full liability for the cost of care would fall on the 'owner' under order of the court.

It should be noted that disqualification, as previously referred to, would be sought in any event.

SPCA Auckland also submits that in situations where there is to be no prosecution action, but it would be perceived as inappropriate to return
the animal to its ‘owner’, and where the ‘owner’ refuses to surrender the animal/s to the SPCA, provisions for forfeiture should also apply.

Equally where an owner is unknown, and reasonable efforts have been made to locate, and where as a result prosecution proceedings are unlikely to occur, under Section 5127 95) of the Act such seized animal/s become the custodial property of the SPCA, and rehoming or disposal can be instigated. This includes companion animals abandoned on properties.

SPCA Auckland also submits that the revised Act should clarify the timeframe whereby people caring for animals become the legal guardians of those animals. At this point in time many animals are presented as stray where in effect they have been cared for some time by the person relinquishing them. Clarity, as with the Dog Control Act should apply.

Finally we would submit that the current stray time for cats, seven days, should be revisited to provide the SPCA the ability to determine the stray time based on the likely outcome of unidentified cats in their best interests. By example given the two categories of cats as defined in the Code of Welfare, namely ‘companion’ or ‘stray’, those unidentified as stray will often be stressed and wild to the extent that live release is unlikely, and to be held for an inordinate time may exacerbate their stress to their detriment. Accordingly we would recommend a discretionary 1 to 4 day holding period for unidentified stressed stray cats, with seven days remaining for those who are likely to be rehomed or have in all probability an ‘owner’.

Recommendation: SPCA Auckland submits that a structure of ‘owner’ election, providing forfeiture or paid custodial care for the duration of court proceedings be established, to overcome excessive custody of animals to their detriment, and the related costs incurred during custody.

Further that a time be established whereby carers of stray animals become the legal ‘guardians’ of those animals.

(Refer also submission from NZCAC)
2.7 SIGNIFICANT SURGICAL PROCEDURES AND TAIL DOCKING

We note in the submission from the Royal New Zealand SPCA, and also the NZVA that certain significant surgical proceedings impacting on the welfare of animals should be prohibited. We concur fully with these views and recommend that such be clearly defined in the revised Act. These include:

- Mulesing
- Tail docking of horses
- Tail docking of dogs
- Tail shortening of horses
- Dubbing
- Declawing a cat

We draw particular attention to the tail docking of dogs on which issue SPCA has been campaigning for some considerable time. We believe there is no net welfare benefit to be had in the docking of dogs tails, and indeed there is a considerable net cost, where for cosmetic or show purposes the animal is relieved of one of its essential components.

Recommendation: SPCA Auckland submits that significant surgical proceedings impacting on the welfare of animals be prohibited, including the docking of dogs, horses and cows tails.

(Refer also submissions from NZVA, NZCAC, Royal New Zealand SPCA)
3.0 SUPPORTING RECOMMENDATIONS

In order to reduce the length of this submission we have limited our recommendations to those considered most pertinent to SPCA Auckland. However we also have other specific welfare concerns, many of which have been expressed by other welfare agencies, which we wish to endorse. These are detailed hereunder and SPCA Auckland submits that these be considered both in strategy and amendments to the Act.

3.1 SHELTER FOR FARM ANIMALS (NZCAC)

Minimum standard of shelter to be provided as a duty of care for farmed animals from sun, wind, rain, snow and hail, to include shelter belts, barns, portable shelters, coats and special dosing.

3.2 HOME KILL AND RELIGIOUS SLAUGHTER (Royal New Zealand SPCA)

Section 573 (4) (b) be repealed or severely modified noting that animal welfare will not be compromised for religious beliefs, and all animals, without exception, are required to be stunned before slaughter.

3.3 EXPORT OF LIVE ANIMALS FOR SLAUGHTER
(Royal New Zealand SPCA)

The revised Act to prohibit the export of live animals for slaughter from New Zealand.

3.4 RODEOS AND CIRCUS ANIMALS (NZCAC, NZVA)

The amendment to contain a provision providing for a ban on rodeos and on the use of exotic animals in the circus, with companion animals only used if the standards established in their Code of Welfare are not compromised.

3.5 USE OF ANIMALS IN RESEARCH, TESTING AND TEACHING
(NZVA, Royal New Zealand SPCA)

The legal justification for experiments on animals be tightened to reduce, with a view to eventually eliminating ‘severe’ and ‘very severe’ pain thresholds currently permitted. Further the killing of any animal with no beneficial outcome is unacceptable and the tests required by S80 (1) be applied. All experiments to be disclosed and published.

3.6 ANIMALS IN EMERGENCIES (NAWEM)

Animal emergency management (planning and response) to be included in all relevant regulations and the Act clearly states the responsibilities of guardians to their animal’s welfare in an adverse event.
3.7 ONLINE REGISTER OF ANIMAL ABUSERS (NZCAC)

Online register of persons convicted of offences under the Animal Welfare Act to be created as public notification, signalling the risk they pose and a possible link to other abuse.

3.8 REGULATIONS PERTAINING TO DOGS (NZCAC)

To include a requirement that those with dogs in their care be required to walk them for at least 60 minutes per day (possible minimum standard) and that the chaining of dogs be made unlawful by means of a specific provision in the Act. Guardians shall be required to be licenced following an educational course, and accordingly permitted to have the responsibility of ‘owning’ a dog.

3.9 BOILING OF CRUSTACEANS (Royal New Zealand SPCA)

The act of boiling a live crustacean to be prohibited and that they be rendered insensible prior to killing.

3.10 HUMAN CONSUMPTION OF COMPANION ANIMALS (NZCAC)

A clause to be inserted into the Act to state ‘It is an offence to intentionally or knowingly kill a companion animal, including a cat or a dog, for the purpose of human consumption, or to consume any part of such animals.

3.11 DESEXING AND IDENTIFICATION (NZCAC)

Animals sold in Pet Shops or adopted by animal welfare organisations as companion animals must be desexed and identified by microchip prior to their sale/ adoption.

3.12 HUNTING AND ANIMALS IN THE WILD (Royal New Zealand SPCA, NZCAC)

Unreasonable and unacceptable offences against animals in the hunt shall not be permitted. It is proposed that S175 include 'so long as the hunting or killing is undertaken in a reasonable manner taking into account the method utilised to hunt or kill the animal and the steps taken to reduce any necessary pain or suffering'. It is recommended that the recreational hunting of ducks be banned, as should the use of dogs in pig hunting.

3.13 GREYHOUND RACING (NZCAC)

Given the high incidents of death from this ‘sport’ it is recommended that either higher levels of control be placed on this activity or that Greyhound racing be banned in New Zealand.
3.14  **FIREWORKS** (NZCAC)

The sale of fireworks to members of the public be banned, and that it be an offence for a private individual to use fireworks on any occasion.
4.0 RESPONSES TO QUESTIONS IN SUBMISSION TEMPLATE

4.1 New Zealand animal welfare strategy
Q1. Do you have any overall comments or feedback about the proposed strategy and its approach?
Q2. What are the risks and benefits of adopting this strategy? Can you think of any missed opportunities or unintended consequences?
Q3. Do the values reflect New Zealander's views about animal welfare? Would you suggest something else and why?
Q4. Do you have any comments on the proposed approaches, leadership roles, or Government priorities?

SPCA Auckland resoundingly supports the initiative of the Ministry for Primary Industry to develop, for consultation, a National Animal Welfare Strategy, and will be pleased to play an active part in its development.

If the title 'Animal Welfare Matters' is taken literally it bodes well for the future of animal welfare in New Zealand. In this context the procedure going forward must be focused on welfare issues rather than economic or political reasons as in the past which have been at the expense of animal welfare.

Measures should be bold and uncompromising and should be reviewed constantly. New Zealanders value their animals, both farming and companion, as recent surveys have illustrated. Measures to improve welfare will be well received.

As indicated SPCA Auckland would be pleased to be an active and positive participant in this initiative.

4.2 Standards for care and conduct towards animals
Q5. Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines?
Q6. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?
Q7. What impact will the proposed changes have on you and/or your organisation or sector?

As detailed earlier in our submissions we believe that Codes of Welfare, if made regulatory and enforceable, will result in a strong and effective structure.

Having said that, the current minimum standards need to be revisited as many of them are not enforceable in their present state or strong enough to ensure compliance. Equally those entrusted in the writing of Codes of Welfare must be independent and focused on the task of welfare rather than other influences which may diffuse their effect. The production of the codes needs to be more efficiently handled and a
dedicated commissioner of animal welfare, with a well paid staff to support him/her would appear essential.

The effect of the Codes of Welfare, being enforceable, with the addition of infringement offences of certain aspects of the code, will greatly enhance enforcement work undertaken by the SPCA.

4.3 Criteria for developing standards

Q8. Would the proposals to add “practicality” and “economic impact” to set the criteria improve the decision-making process, or would you suggest something else?

Q9. Do you agree that having “transitions” and “exemptions” is a better way to handle the situations that currently fall under “exceptional circumstances”?

Q10. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q11. What impact would the proposed changes have on you and/or your organisation or sector?

From the outset ‘practicality’ and ‘economic impact’ diffuse real value of the philosophy that ‘animal welfare matters’ and this has been one of the flaws in earlier systems.

‘Exceptional circumstances’, ‘exemptions’ and ‘transitions’ are all excuses for not doing things as they should be done. Such terms will have the effect of compromising animal welfare resulting in weak legislation, and equally weak enforcement.

4.4 Role of the National animal Welfare Advisory Group

Q12. Do you agree there is still a role for an independent committee on animal welfare?

Q13. Do you agree that the committee should be able to publish its advice at its discretion?

Q14. Do you agree that the current membership of the committee is appropriate or does it need to be changed?

Yes, we agree that there is definitely a role for a fully independent group to focus on animal welfare, and for this reason the starting point must be to revisit the structure and redefine the terms of reference of NAWAC to reflect its direction. The importance of this group cannot be underestimated and for it to undertake this task resources will be needed to improve its efficiency.

There is a view that the committee should be politically free, and its pipeline to effect change must be direct and influential.
4.5 Live animal exports
Q15. Do you agree with the proposal to create directly enforceable standards for the export of live animals?
Q16. Do you agree with broadening the purpose of the exports part of the Act so that New Zealand’s reputation can be considered when making rules or deciding on applications?
Q17. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q18. What impacts will the proposal have on you and/or your organisation or sector?

SPCA Auckland abhors the export of live animals specifically for slaughter and would seek to have a ban imposed on this practice. Our International reputation in this regard has improved since we imposed severe limitations on this trade. It is a small step to impose a blanket ban on the practice.

4.6 Significant surgical procedures
Q19. Do you agree with the proposals to change who can perform significant surgical procedures under veterinary supervision?
Q20. Do you agree that the Act should allow for mandatory conditions to be placed on controlled surgical procedures?
Q21. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q22. Are there any ways the system should be improved?
Q23. What impact would the proposed changes have on you and/or your organisation or sector?

SPCA Auckland is in full support of the proposal to limit significant surgical procedures, and have alluded to that earlier in this paper.

We are also totally supportive of the submissions put forward by the NZVA and the Royal New Zealand SPCA in this regard.

4.7 Reporting of animals killed for research, testing or teaching
Q24. Do you agree that the number of animals killed humanely for research, testing and teaching should be included in the official statistics?
Q25. What impact, including costs, would the requirement to report animals killed for use in research, teaching and testing have on your organisation?
Q26. Can you think of any other changes that would improve the system for regulating animals used in research, testing and teaching?

With over a quarter of a million animals used in research, testing and teaching each year we are considering something that has a profound effect on a vast number of animal lives.
Given those numbers we should be fully informed on all matters relating to their welfare, and we should also be questioning their use, and agitating for alternatives.

The NZCAC presented a submission which we share, and reprint under:

"NZAC submits that Part 6 of the Animal Welfare Act 1999 relating to the use of animals in research, testing and teaching should be redrafted to provide greatly enhanced protections to animals. All other avenues should be exhausted before the use of animals in research, testing or teaching is permitted. The legislation should contain a provision requiring those seeking to use animals in such ways to meet a test of urgent necessity to justify such use of animals. A sinking cap on the number of animals permitted to be used in this way should be included either in the statute or in regulations. The Animal Welfare Amendment Bill 2012 should include a statement that New Zealand's goal is to work towards a complete ban on the use of animals in research, testing or teaching by a specified date.

4.8 Enforcement Tools
Q27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?
Q28. What are risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?
Q29. What impact would the proposal have on you and/or your organisation or sector?

SPCA Auckland totally agrees with the proposal to introduce infringement offences (instant fines) to minor offences, many of which will link back to the minimum standards of care detailed in the Codes of Welfare. The ability accorded to our SPCA inspectors to utilise this method will be effective in attending to a wide range of offences and will greatly enhance the enforcement of the regulations and lift animal welfare to new heights.

4.9 Other proposed offences
Q30. Do you agree with the proposal to make drowning a land animal an offence?
Q31. Do you agree with the proposal to clarify that wilful and reckless ill treatment offences apply to animals in a wild state?
Q32. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

The proposals in Q30 and Q31 are totally endorsed by SPCA Auckland.

4.10 Technical amendments
Q33. Do you have any comments on any of the technical amendments proposed in Table 1?
One of the main concerns held by SPCA Auckland is contained under 2.6 of our submission, namely the requirement to retain custody of seized animals until the completion of Court proceedings, and our recommendations contain some practical solutions to this vexing problem. We trust some urgency will be put to this matter.

4.11 Any other comments
Q34. Do you have any other comments or feedback not covered by these questions?

We would refer you to the Preamble and Executive Summary at the commencement of this submission, particularly

- The need to remember at all times this is a law involving animals as sentient and therefore feeling beings

- Our responsibility to them is to resolutely protect them and legislate for them without political or economic pressures that will compromise their welfare

- This is a law that will infiltrate into communities where cruelty to animals and humans is rife and must be firmly addressed.

- Our International reputation rests on the manner in which we treat our animals and we will be judged in the manner in which we protect their welfare.

- We need to boldly address the full issue of animal welfare, not parts of it that suit, but in its entirety, to provide a comprehensive welfare package to all New Zealand animals for which we are responsible.

To achieve this we can do no better than start with two essential elements detailed at the commencement of our submission:

- To declare animals as sentient beings, capable of feeling, and in acknowledging in the Act to undertake to legislate for them being fully and uncompromisingly cognisant of their feelings.

- To eliminate the 'ownership' of animals as objects and chattels to declare that those in whom they give their trust are their 'guardians' and accordingly legally responsible to protect and care for them. Guardianship fully describes our relationship with animals.

Executive Director, SPCA Auckland
28 September, 2012
Submission on “animal welfare matters”

Speak Up For Animals

Q1: Do you have any overall comments or feedback about the proposed strategy and its approach

I welcome the opportunity to have my say on this proposal to fine tune the Animal Welfare Act so that it gives greater protection to animals. I have concerns over some details in the proposals (which I will expand on in my answers below), but the overall intent – to bring treatment of animals in line with changing societal expectation – is sound. Particularly because as our moral sense progresses, and as we learn more about the world of non-human animals, our society is slowly coming to realise that animals can suffer, can feel joy and pain, boredom and excitement, loneliness and love, and that their life matters to them. Animal emotion is becoming a serious subject for behavioural scientists, and many have devised ingenious means of quantifiably measuring traits such as emotions and personality1. As such, animal welfare regulation needs to be continually reviewed to provide greater protection for animals.

This submission represents the official views of Speak Up For Animals, a grass roots group I belong to, that is committed to educating the public about cruelties involved in animal production, and promoting a vegan lifestyle.

I am writing this submission as an expert in animal welfare, and human animal studies. I have a number of peer reviewed publications and conference presentations on the science, ethics and politics surrounding animal welfare legislation (listed at the end of the submission). Many of the points I make have come from research I have conducted over the last 12 years on the New Zealand situation. I therefore expect this submission to be taken seriously and treated with respect.

Q2: What are the risks and benefits of adopting this strategy? Can you think of any missed opportunities or unintended consequences?

The benefits will be to the animals, and this is quite appropriate since this is the purpose of the Animal Welfare Act.

Some industries may lose money if regulations around animals are tightened, but since the main purpose of the Act is to protect the interest of animals, this should not be a

consideration. In the same way, industry may lose money because of tighter regulations around such matters as environmental protection, fair wages for workers, health and safety, and insider trading. It is the responsibility of government to provide regulations that protect the most vulnerable members of society and ensure everyone has a fair go. It is not part of the government mandate to provide protection for industries that can not or will not act in a way that the public has come to expect.

Q3: Do the values reflect New Zealanders' views about animal welfare? Would you suggest something else and why?

New Zealanders do generally consider that animals have interests in not suffering, and that animals should not be made to suffer “unnecessarily”. These values have been described in the discussion document. However, what is considered “necessary” is constantly changing, and while some animal use is acceptable to the public, other uses are not, and the Animal Welfare Act has to reflect this.

For example, New Zealand used to be a whaling nation, but a combination of scientific, ethical, philosophical and theological arguments have altered the public perceptions to such an extent that New Zealanders now consider that whales should enjoy special protection, and this is reflected in the Marine Mammals Act. New Zealanders who will quite happily tuck into dead cows feel a sense of outrage when other nations eat dead whale. New Zealanders, like other nations, have a double standard when it comes to animal protection. But a double standard is better than no standard at all, and regulations need to respect public sensibilities towards certain animals and repugnance to certain uses animals are put to.

One specific way this needs to be addressed is in the use of animals for Research, Science and Teaching, covered in Part 6 of the Act. It would be simplistic to state that New Zealanders simply accept the use of animals in this way. New Zealand surveys have shown\(^2\) that acceptance depends on both the species of animal being used, and the use it is being put to. So for example experiments to provide more revenue for drug companies, test pesticides or cosmetics, or improve agricultural production are less acceptable than those which the public believes are necessary for medical progress\(^3\).

Similarly, the public have less repugnance at using rats than they do at using companion animals for example. This differential moral stance is already acknowledged by the Animal Welfare Act in the stricter protection given to non-human hominids. Other species may similarly need greater protection to accurately reflect public concerns.

Q4: Do you have any comments on the proposed approaches, leadership roles, or government priorities?

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I have serious concerns with any legislation protecting animals that passes on any leadership responsibilities to industry. Industry should be regarded as one of the stakeholders, with as much right to have their views listened to as any other stakeholder, but nothing more. One of the issues with the regulatory system as it stands is that industry groups have had disproportionate power and influence. Some of the ways that the industry have used this power to hold back improvements in the way animals are treated are as follows:

- The Egg Producers Federation (EPF) claimed they "owned" the Code of Welfare for Layer Hens, and threatened MAF with court action if they attempted to change it. This was in spite of their public press releases stating the code was produced in consultation with all stakeholders.
- EPF used a mixture of threats and coercion on (then) Minister of Agriculture Jim Anderton to persuade him not to adopt the findings of the Regulations Review Committee that the Code of Welfare for Layer Hens was unlawful.
- EPF lobbied extensively to keep battery cages, spending NZD$500,000 on the campaign, in spite of their public announcements stating their support for all production methods.
- The Poultry Industry Association of New Zealand (PIANZ) have side-lined legitimate opposition from groups such as the SPCA, and have succeeded in having maximum allowable stocking density based not on scientific findings but on industry standards.
- NAWAC is unbalanced in favour of individuals with industry affiliations.
- NAWAC uncritically accepts statements from the industry with dubious scientific validity, and even reports whose very existence is in doubt, while ignoring more rigorous studies by truly independent scientists such as those on the European Scientific Committee for Animal Health and Welfare and its predecessors.
- NAWAC ignores any scientific reports or any testimony that does not fit with its own rigid and limited idea of science.
- The Pork Industry were caught out when Colin Kay, an executive on their board, was found keeping pigs in illegal sow crates that were narrower than the 60cm allowed by law. The Pork Board used their influence with government to get the regulations retrospectively changed to allow narrower crates.

Giving the animal industries any statutory powers under the Animal Welfare Act is akin to giving statutory power to tobacco companies under the Smoke Free Environment Act, to developers under the Resource Management Act, to corporate manufacturers under the Health and Safety in Employment Act, or to the Mongrel Mob under the Crimes Act.

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4 Morris (2006, 2011)
5 Morris (2009, 2012)
6 Ibid
7 Morris (2009).
10 Morris and Batsone (2011)
I agree with the requirements for government leadership, especially the expectation that they provide opportunities for people to participate in decision making. This means that the views of the general public must actually be respected, and not sneered at, or simply ignored, as former head of NAWAC Peter O'Hara admitted to doing\textsuperscript{12}.

One reason given for discounting common sense views by the public is that they have sometimes been found to be wrong. The common sense notion that the sun goes around the Earth and the common sense view of classical physics are two examples that were later found out to be incorrect.

However, in both these cases the common sense ideas were only abandoned after overwhelming evidence swung the balance in favour of the trained scientists, and the change in belief only came about after rigorous discussions among scientists, many of whom were not always convinced of the new ideas. The heliocentric view of the solar system, far from representing a triumph of science over superstition, as it is often presented in popular science textbooks, was actually only adopted after quite vigorous discussion and experiments, with distinguished scientists contributing to both sides of the debate.

In the case of animal welfare there is no overwhelming evidence — or even any convincing evidence - to counteract the common sense viewpoint. Common sense views of the public have proved surprisingly accurate in identifying conditions conducive to poor welfare, and more detailed scientific study by trained scientists on animal welfare has actually backed up public opinion\textsuperscript{13}. Unlike physics or astronomy, which require specialised study to master, reading the emotions and feelings of other sentient beings is part of general emotional intelligence, and a necessary evolutionary adaptation in a social species such as Homo sapiens.

\begin{quote}
The wording of the Animal Welfare Act therefore needs to be changed so that it must “recognise and provide for” public concerns, and not just “have regard for” them.
\end{quote}

Government leadership is correctly identified as being important, but in the case of animal welfare it will always be compromised while it is under the charge of the government agency responsible for improving primary production — in other words forcing even more meat and milk from already overstressed farm animals. MAF has admitted in recent reports that animal welfare is seen primarily as a market access issue\textsuperscript{14}, which means that image is more important than substance, a point made in a report commissioned by MAF\textsuperscript{15}. As Peter Beaton put it in his report to the Law Commission\textsuperscript{16}, this means that we will only be nice to animals while our trading partners are watching. This is in contrast to

the stated aim of animal welfare regulation in the discussion document, which is that "it matters how animals are treated – it matters to the animal and it matters to us" (p.8).

Responsibility for administering the Animal Welfare Act therefore needs to be taken away from MPI and given to another agency. There is no reason why MPI should have responsibility in any case. Animals are not only used for primary industries but for medicine, teaching, environmental research and entertainment. Placing the Act under the auspices of the Ministry of Education, Ministry for the Environment, Ministry of Health or Department of Internal Affairs would make as much sense.

However I propose that instead of passing responsibility to any other existing government agency, that a separate government agency for animal welfare be set up.

The Animal Welfare Act needs to be administered by a separate government agency, with no affiliation to any of the industries the Act is regulating. The mandate for this agency should be animal welfare, and nothing else.

The new agency will be primarily concerned with ensuring that animals are treated according to the ever changing public perceptions, as well as providing education and information that will allow these perceptions to be better informed.

Q5: Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines.

I certainly agree that Minimum Standards in the Codes of Welfare should have more legal standing. The Animal Welfare Act originally stipulated that all Minimum Standards should become Codes of Welfare with the legal status of regulations within 3 years. Twelve years down the track, this has still not happened, and shows the vast gulf between rhetoric and reality when it comes to taking the welfare of animals seriously.

Promulgating all existing Codes of Welfare and Minimum Standards as regulations will mean more say by our elected government and the public and less say by the industry. The regulations need to be drafted by an independent government agency with input from the public, and not by industry groups that can claim ownership of the code. They will have to be approved by cabinet, and in an MMP environment, this means that the final product would have to reflect the plurality of views within New Zealand; views of the general public, of vegetarians, environmentalists and iwi as well as industry. Finally, regulations will be subject to automatic scrutiny by the Regulations Review Committee. Hopefully recommendations by this committee will carry more weight for cabinet approved regulations than they did for industry approved Codes of Welfare. It should be a lot harder to simply ignore the recommendations of this committee in the manner of Jim Anderton.

The question remains as to what will be covered by the Regulations. I note that the discussion document provides the minimum standards of the Code of Welfare for Pigs as an example. I would consider that as an interim measure.
All existing Minimum Standards, whether or not they are part of an existing code of welfare, must be immediately promulgated as regulations.

The agency responsible for policy development will need to redraft the regulations to better reflect all scientific findings and public sensibilities, in consultation with the public since the present Codes of Welfare have been influenced by the industries they are regulating.

Consultation on all existing minimum standards needs to be completed within the next 3 years, as stipulated in the original Animal Welfare Act.

Q6: What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

"it matters how animals are treated – it matters to the animal and it matters to us" (discussion document, p.8).

The benefits will be to the animals. The benefits will also be to us. The rights of animals to an existence free from suffering is important. Our rights as citizens in a democracy to have our wishes translated into action by our democratically elected leaders is also important.

Q7: What impact will the proposed changes have on you and/or your organisation or sector?

It may assist me to become prouder of being a New Zealander. Instead of having to face up to Japanese colleagues who accuse me of hypocrisy in opposing their cruel practices to whales and dolphins while claiming citizenship of a country that rears millions of domestic animals in hideously inhumane conditions.

Q8: Would the proposals to add "practicality" and "economic impact" to the set of criteria improve the decision making process, or would you suggest something else.

I strongly oppose this suggestion. Adding "practicality" and "economic impact" would compromise animal welfare. The purpose of the Animal Welfare Act is not to maximise profits for the animal industries. It is to ensure that animals are not made to suffer, even if allowing suffering would increase profits. This is quite consistent with the purposes of other acts that restrict our money making behaviour. The purpose of the Crimes Act for example is to protect people from being robbed, assaulted and killed, even if allowing this would increase profits for the assailant. The purpose of minimum wage legislation is to provide a fair return for workers, even if employer profits suffer as a result. Allowing economics to be part of the decision making process would be a retrograde step.

I also question what is meant by "practicality", and why it is different from "economic impact". It is quite "practicable" for example to keep pigs in free range conditions, or mixed
housing that allows them to turn around, forage and express at least some of their natural behaviours. Indeed many pork producers do so. It is similarly quite “practical” to keep hens in free range conditions, to ban rodeos, as Auckland City have already done, and to use slower growing breeds of broiler chickens that do not suffer from lameness and ascites, as is done in Europe. It is practical but not economic because industry is out to maximise its profit, not look after animals. Using “practicality” as a criterion is not only retrograde but misleading.

The Animal Welfare Act already includes provisions that allow exemptions to the overall purpose of the act under “exceptional circumstances”. It is worth referring to the report by the select committee debating the original Animal Welfare Bill in 1999. This group of cross party representatives made it clear that the “exceptional circumstances” clause should apply to circumstances that were genuinely exceptional. It cannot be used as a general opt out clause to cover industry short sightedness, intransigence or greed.

The “exceptional circumstances” provision has been used far too often simply to bypass the main requirements of the Animal Welfare Act. Minister Jim Sutton for example defended the use of the “exceptional circumstances” clause in the Layer Hen Code of Welfare because it has been used only rarely in other codes of welfare.

This is a totally illogical statement, because “exceptional circumstances” must be judged in each individual case in which they are claimed, not on a statistical basis. To use an analogy from another legal jurisdiction, if I am caught speeding, I may be let off a penalty if I can prove I had to travel to an emergency, and so there are exceptional circumstances. It would be illogical to assert that I should be allowed to claim exceptional circumstances simply because nobody had done so before.

The Regulations Review Committee were not impressed with Sutton’s sophistry and declared that the Code of Welfare was unlawful, in spite of the “exceptional circumstance” provision. However, following untoward pressure from the industry, the (then) minister of Agriculture ignored their decision, an almost unprecedented act.

Not only should economics and “practicality” be excluded from consideration, but the Animal Welfare Act should be tightened so that “exceptional circumstances” must mean just that.

The “exceptional circumstances” clause should only be used where there would be long lasting and severe consequences to an entire industry or culture, and where the industry has not had sufficient warning about changes required. This would not apply in the case of severe confinement of hens for example, since the industry has had plenty of warning since at least 1994, that these practices are unacceptable, and since other countries such as Switzerland have been cage free for a number of years.

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17 Weaver and Morris (2004).
18 Morris (2009).
19 Animal Welfare Bill (no. 2) as reported from the Primary Production Committee. Appendix to the journals of the House of Representatives New Zealand 1996-1999 (Vol. LXVI, p. 663-683). Discussed by Morris 2011
Similarly, “exceptional circumstances” cannot be used to justify religious practices.

One might just as well exempt religious stoning from the Crimes Act. Religious practices evolve and change over time. Certain practices that were commonplace among Christians not that long ago, such as slavery and burning at the stake, are now unheard of. In a similar fashion, religious freedom must not be used as an excuse to continue practices that cause animal suffering and which the majority find objectionable.

Even though there is probably a place for “exceptional circumstances” in the act,

“exceptional circumstances” must only be used to allow a phase out, and cannot be an excuse to continue any inhumane practices indefinitely.

When deciding on the length of the phase out period, the regulatory agency must take into account not only the feasibility of the change, but how much warning the industry have already had, and what steps they have made to improve welfare.

Q9: Do you agree that having “transitions” and “exemptions” is a better way to handle the situations that currently fall under “exceptional circumstances”?

No I don’t. I consider that the provision for exceptional circumstances needs to be tightened up, not relaxed, for the reasons I have given in answer to Question 8.

Q10: What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Under the present system there is already de facto acceptance that industry interests must take precedence over animal welfare. This is quite obvious from the disproportionate influence industry has had over the decision making process, as discussed above. The industry also has allies in academia who selectively cherry pick which “scientific” arguments they will use to support industry welfare recommendations, which, coincidentally are also the ones that maximise their profit21. If this already widespread practice of simply kow-towing to industry is specifically written into legislation, the government and industry could no longer pretend that “New Zealand is acknowledged internationally for having a world class animal welfare system” (discussion document p.1). When presiding over an industry that has the highest rate of lameness in the world22, the PIANZ would not be able to boast of how fantastic their animal welfare standards are, and the government would not be able to back them up as they have done23.

The deficiencies in the system will become obvious, and the public can then use this knowledge to make animal welfare an election issue and vote for parties that have a genuine concern for animal welfare. We may see more people eschewing animal products

21 Morris and Beatson (2011).
altogether as a result, and this can only be a good thing for animals. Overseas consumers will also be able to make a more informed choice about the welfare quality of New Zealand products, and activists would be able to point to the new provisions when campaigning.

On the other hand, the proposals will not be of benefit to animals in the short term, nor to the general public who are demanding that animal welfare be improved, not worsened. Overall therefore the changes will be detrimental and should be scrapped in favour of tightening regulation as proposed in my answer to Question 8.

Q11: What impact will the proposed changes have on you and/or your organisation or sector?

If “economic impact” and “practicality” were considered more important than humaneness then I would feel ashamed of being a New Zealander. I would join more groups advocating a boycott of cruelly produced New Zealand products, and Speak Up for Animals would recruit more members and become more active.

Q12: Do you agree there is still a role for an independent committee on animal welfare?

Overall I agree with the proposal that Codes of Welfare should be promulgated as regulations, drafted by a government agency not affiliated with MPI, and with all the scrutiny by Cabinet and the Regulations Review Committee that this would involve (see answer to Question 4).

If this is done, the function of drafting regulations would be covered by public servants acting for the new agency. Under State Services provisions, such officials would be required to be politically neutral and to serve the government of the day.

However, should it prove necessary for these officials to take advice from an external agency, then it is important that this agency should be genuinely independent. Under the present system there are two supposedly independent agencies, NAWAC for Codes of Welfare, and NAEAC to provide advice on the use of animals for Research, Science and Teaching. Neither of these agencies can be remotely described as independent.

NAWAC is stacked with representatives from the industries it is supposed to be regulating, with a token member from the SPCA, whose views are often sidelined\(^{24}\). Similarly NAEAC is primarily composed of active or recently active researchers, many of whom have even been approving their own research\(^{25}\).

Other representatives on these committees are veterinarians. This group of people are supposedly protectors of animals’ interests, at least that is the image they like to portray. In fact veterinarians – unlike doctors - are responsible to their clients, not their patients,


\(^{25}\) Documents showing approval of research signed by the researcher have been obtained through the official information act. These are available from the author on request.
and have been notoriously vocal in supporting inhumane practices a long time after the general public have started to oppose them.  

Q13: Do you agree that the committee should be able to publish its advice at its discretion.

Of course it should. Freedom of speech is a corner stone of our democracy. I would go further. If the committee is being funded by the tax payer, then it will come under the auspices of the Official Information Act, and it should be required to publish its advice, subject to the limitations of this Act.

Q14: Do you agree that the current membership of the committee is appropriate or does it need to be changed.

The current membership needs to change so it is more independent, as discussed in my answer to Question 12.

Q15: Do you agree with the proposal to create directly enforceable standards for the export of live animals?

Most definitely. And one of these regulations must be a complete ban on the live shipment of animals for slaughter. This is partly because the conditions on board the ships are particularly inhumane and an unacceptable proportion of animals die en route, and also because, as undercover footage of Australian live sheep shipments from Animals Australia has shown, most of the overseas slaughterhouses where the sheep end up have no concept of animal welfare.

New Zealand, in line with most civilised nations, does not allow suspected criminals to be extradited to places where they may face the death penalty, because this is against the law of our country. We recognise that our duty to protect our residents from harm extends beyond our own borders. Similarly, animals should not be extradited to places where they may face inhumane slaughter that is prohibited under New Zealand law. Our animal residents also need to be protected from harm.

Q16: Do you agree with broadening the purpose of the exports part of the Act so that New Zealand's reputation can be considered when making rules or deciding on applications.

No I do not. The sole consideration under the Animal Welfare Act must be animal welfare (the name gives us a clue here). If it should prove necessary to impose restrictions over and above those required for animal welfare, then this can be done under other legislation.

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Q17: What are the risks and benefits of these proposals. Can you think of any missed opportunities or unintended consequences?

The beneficiaries are again the animals, and the general public. The only reason to allow live shipment for slaughter in this age of refrigerated shipping, is religious sensibilities. As discussed under my answer to question 8, religion cannot be used to excuse inhumane practices. I am a practising Christian so I am not anti-religion. I am equally rigorous in examining the prejudices of my own religion in the way it treats animals, and in expounding an alternative Christian vision that takes animal welfare more seriously28.

Q18: What impact will the proposed changes have on you and/or your organisation or sector?

See my answer to question 11.

Q19: Do you agree with the proposals to change who can perform significant surgical procedures under veterinary supervision?

I am happy with provisions that allow trainee vets to perform significant procedures under strict supervision, since this would be a better way for them to learn their trade than vivisection in the classroom. It is also in line with the way surgeons learn their craft.

Q20: Do you agree that the Act should allow for mandatory conditions to be placed on controlled surgical procedures?

I do not agree with the present regulations around controlled procedures that allow “owners” of animals or their employees to conduct operations. Anyone conducting any manipulations on animals should have some degree of training, through a recognised training programme under the National Qualifications Framework. It does not necessarily require full veterinary training, but since all manipulations have the potential to increase suffering if done badly, some form of training should be mandatory.

The exact nature of what kind of training is required needs to be the subject of another discussion document, which would require input by veterinarians and animal welfare experts.

Q21: What are the risks and benefits of these proposals. Can you think of any missed opportunities or unintended consequences?

The beneficiaries are again the animals, and the general public.

Q22: Are the any other ways the system could be improved?

The procedures in section 4.7.5 need to be tightened so that animal welfare is given more emphasis than industry profit maximisation, as detailed below.

**Mulesing:** This painful operation should be totally prohibited, not even made a significant procedure as there are no cases where this operation would be necessary for medical reasons. Mulesing is solely performed to limit fly strike, and there are less inhumane ways of doing this, as I have already indicated in my peer reviewed publications on this topic. These include

- Breeding "ethical sheep" with less wool around the tail
- Dagging and crutching
- Feeding sheep on diets that include more roughage to reduce scouring
- Vaccination
- Organic husbandry
- Siting sheep in windier pastures
- More frequent inspection and treatment for fly strike
- Traps and baits

**Tail docking of horses:** This should be a restricted procedure as it is totally unnecessary, though there may be isolated cases where it is required for genuine medical reasons.

**Laparoscopic artificial insemination:** This is not an operation I know much about, but given the suggestion that the operation needs to be carried out by skilled operators, it should be at least a significant procedure.

**Embryo collection via exteriorised uterus (surgical embryo collection) in sheep and deer:** Operations on the reproductive system are often painful and require effective anaesthesia and analgesia. Given that the operation seems to be only useful to maximise profits, then it should be prohibited.

**Tail docking of dogs:** This causes acute and chronic pain, and is totally unnecessary for anything other than human vanity. As there may be isolated cases where a tail needs to be removed for genuine medical reasons, it should be a restricted procedure.

**Tail shortening of cows:** When any organ is removed, it not only causes acute pain, but can lead to chronic "phantom limb" pain through the formation of neuromata. This should be a restricted procedure.

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32 Ibid
Desexing of companion animals: This needs to be conducted by skilled veterinarians and may also be painful if adequate anaesthesia and analgesia is not used. It also does restrict the animals’ ability to perform their normal patterns of behaviour. This would include not only not being able to lead a normal sex life, but may also cause other gender-specific behavioural changes.

However, this harm to the animals needs to be balanced against the greater harm that results from uncontrolled breeding, both to the companion animals involved, and to the wildlife that they kill if they are allowed to over-breed. On balance therefore I consider this should be a significant procedure. Regulations also need to be put in place stipulating adequate post operative pain relief. Alternatives such as vasectomies for males and operations for females that keep the ovaries intact also need to be explored.

Desexing of horses, llamas and alpacas: This operation would have the same negative effects of companion animal desexing without the positive effects. It should therefore be a restricted procedure.

Tooth extraction in horses and companion animals: This should be a restricted procedure to be carried out only for genuine medical reasons.

Liver biopsy: This should be a restricted procedure. There have to be other ways of assessing health, through blood or urine sampling for example.

Removal of dew claws in dogs: Calling these “claws” is misleading, since they are actually living tissue, homologous to a thumb or big toe in humans. Since any form of amputation can lead to acute and chronic pain, this should be a restricted procedure.

“Declawing” of cats: This legally sanctioned operation is not mentioned in the discussion document, but no discussion of pointless and cruel procedures would be complete without it. Again, it is a misnomer to call it “declawing” since what it is is removal of all digits to the first joint. This is not only painful but would cause severe restrictions on normal behaviour for cats. Cats rely on their claws to climb and to defend themselves. Removing them would make them more vulnerable to attack since they can neither fight nor escape from their assailant.

The only purpose of declawing is convenience for the “owners”. This in no way compares to the gross inconvenience and pain suffered to the cat. This should therefore be a prohibited procedure.

Caslick’s procedure: I am not familiar with this procedure, but based on the description in the discussion document, it should be a restricted procedure.

Comb removal from game poultry: This procedure, like tail docking in dogs, is purely for cosmetic reasons. Its use should be restricted to genuine medical emergencies, and therefore be a restricted procedure.

Beak trimming in poultry: This is not mentioned in the discussion document, but since it
also involves mutilation of poultry, and is more widespread than comb removal, it needs to be considered. It is performed to prevent feather pecking, fighting and cannibalism in poultry. These destructive behaviours can be controlled non-intrusively in a variety of ways, including selective breeding, environmental enrichment, providing plenty of space, appropriate siting of nest boxes and use of mash instead of pellets34. There is no need to resort to intrusive operations to prevent fighting. Beak trimming can cause acute and chronic pain35, and should therefore be a prohibited procedure.

Surgical castration of livestock on farms within certain age limits and under certain conditions:

The Codes of Welfare allow castration for young animals with no anaesthesia or veterinary supervision, but castration of older animals is a controlled procedure. This acceptance of mutilation in the young, like the custom of circumcising baby boys with no anaesthetic, is based on mythology not science. It has often been thought that the young of all species (including our own) do not feel pain, but there is no evidence to support this36. In fact, it is quite possible that younger animals (including humans) are more susceptible to pain, because their pain inhibition pathways are not fully developed37.

Surgical castration (including the use of rubber rings) at all ages should be a controlled activity, except where alternatives such as chemical castration or separation of the sexes exist, in which case it should be prohibited.

Q23: What impact will the proposed changes have on you and/or your organisation or sector?

See answer to question 11.

Q24: Do you agree that the number of animals killed humanely for research, testing and teaching should be included in official statistics?

Yes I do. The argument against this seems to focus on not making moral judgements about the worth of animals. But the Animal Welfare Act is all about making moral judgements. As the discussion document puts it, it is making moral judgements that animals "matter", both to them, and to us. In this case the lives of animals must also matter, and it is no more in an animal's interest to die than it is in yours or mine. In any event, it is not possible to state categorically that animals used in experiments did not suffer, no matter how humanely they may have been dispatched. The very act of keeping animals in cages for example restricts their normal patterns of behaviour, and can lead to visible indicators of stress38.

Q25: What impact, including costs, would the requirement to report animals killed

34 Morris (2006)
35 See experiments by Michael Gentile, summarised in Morris (2006)
37 Bennet and Perini 2003 (op. cit., note 31)
for use in research, teaching, and testing have on you or your organisation.

It would allow me, as a member of the public, to make a more informed choice on what experiments, testing and educational procedures I would support, based on all the information. As a university teacher, it would provide me with more information to make informed choices about how to change my assessment and lesson planning so that the cost to animals is further reduced.

Q26: Can you think of any other changes that would improve the system for regulating animals used in research, testing, and teaching

The system of animal ethics committees and codes of conduct for each organisation performing animal experiments is supposed to provide for a cost-benefit analysis such that the benefits of conducting the research are balanced out against the harm caused to the animals (section 80(1)(b)). The system is also supposed to support the “Three R’s” of Replacement, Reduction and Refinement. This means that fewer animals should be used, and non-animal alternatives substituted wherever possible. Where the aims of an experiment cannot be achieved without using animals, the methods should be refined to cause as little suffering as possible (section 80(2)(b)).

This is great in theory, but has not worked in practice. I have documented a number of published experiments where the aim and practical application of the experiments was dubious, the methodology sloppy, too many animals were used, or the experiment could have been modified to cause less suffering but was not. More recently, Alan Goldenthal, himself an experimenter on animals who was found to have conducted animal experiments without animal ethics committee approval, pointed out to the Science and Education Select Committee that a number of cases of unnecessary duplication of experiments takes place because of poor communication or concerns with commercial sensitivity.

It is therefore apparent that the system requires a great deal of change to provide better protection for animals. These changes include widening the scope of animal protection, taking more notice of the perceived purpose of the experiment, altering the nature of animal ethics committees (AEC’s) so they are less biased towards the interest of researchers, providing greater transparency, and clarifying and refining the cost-benefit equation used to determine whether experiments can go ahead.

Suggested changes to provide a fairer deal for animals are discussed below. Many of these have been published and discussed previously

Widening the scope of protection

The Animal Welfare Act includes embryos in the second half of their development stage in its sphere of protection, presumably because these late stage embryos are considered

40 “More disturbing stories emerge from beagle research lab”, Campbell live (Television broadcast), 5 December 2011.
sentient. However, many experiments, especially since the advent of nuclear transfer and associated genetic modification, use early stage embryos for their manipulations. These single cell embryos are unlikely to be sentient, but the experiments involve allowing these manipulated embryos to grow to a stage where sentience is apparent. Many of these advanced stage foetuses or new born animals suffer intense pain through deformities brought about by the manipulation process.\(^{42}\)

The definition of "animal" under the Animal Welfare Act must be expanded to include early stage embryos.

Genetic modification experiments also involve importing transgenic animals (usually rodents) from countries like the USA that have very little ethical oversight.\(^{43}\) Their import into New Zealand is regulated under the HSNO Act, but this does not take into account animal welfare concerns. Since the researchers in New Zealand are creating demand, they need to take responsibility for any suffering caused to these animals, and their welfare needs to be regulated and protected under the Act, even if they were not born in New Zealand.

Animals that are manipulated outside New Zealand and then brought into New Zealand for research, teaching and testing need to be protected under the Animal Welfare Act.

Changes to Animal Ethics Committees

The Animal Welfare Act stipulates that these committees have to comprise of at least one member from an approved animal welfare organisation, and one member elected by the public at large (usually through the regional council). This is supposedly a safeguard to prevent bias. However, the institution wanting to conduct the experiment can stack the committee with as many members as it wants. Lay members elected by the public have reported feeling intimidated by the scientific representatives on the committee,\(^{44}\) and their concerns being ignored or sidelined.\(^{45}\)

AEC membership should not include any members from the institution applying to conduct the experiments. They should instead be made up solely from representatives of the general public, with scientists restricted to having an advisory role and not being voting members.

Greater transparency

\(^{42}\) Morris and Weaver (2003a)

\(^{43}\) Rats, mice, birds, reptiles and amphibians are not even protected by the US Federal Animal Welfare Act in spite of making up the largest number of animals tested.


\(^{45}\) Bourke (2005) (op cit., note 41).
Former Green MP Sue Kedgley pointed out that it is almost impossible to discover what goes on behind the closed door of laboratories, or to obtain minutes of AEC meetings. Kedgley compared the AEC's with the SIS in terms of secrecy. Activists have reported similar frustration, with requests under the Official Information Act being ignored or obfuscated, requiring repeated appeals to the Ombudsmen before any information at all can be gained.

This is consistent with my own experience. It took me more than a year for example to obtain the picture of a sheep vivisection experiment at AgResearch (see photograph in separate attachment). At first AgResearch refused to release it at all, then told me I could only view it at their Upper Hutt premises, then sent a poor quality black and white photocopy, before eventually sending the original colour photograph after appeals to the Ombudsmen.

I have had similar difficulty in obtaining AEC minutes, and I have been unable to find out the names of anyone on the AEC's, in spite of these people being accountable to the general public. The Ombudsmen ruled that it was acceptable to keep the names of these people secret because of alleged danger to their safety. This is in spite of the fact that no vivisector has ever been killed by activists, though a great many activists have been murdered by supporters of abusive industries.

The secrecy surrounding vivisection can be contrasted with the openness around experiments on humans. I was quite surprised after contacting the chair of the Wellington region human ethics committee to be given permission to sit in on the entire meeting and take notes if I wanted to. AEC's should be required to be open to the public in a similar way.

Animal Ethics Committees should be subject to the Local Government and Meetings Act, and be open to the public. Minutes of meetings, and details of experiments approved by AEC's should be readily available to the public.

Value of animal life

Animal life as such has no legal protection if the animal is killed "humanely". It is therefore not included in the harm/benefit analysis central to Part 6 of the Act. Including animal killing as a "harm" was discussed and rejected by the select committee considering the bill. They considered it would bring in an "animal rights" not just "animal welfare" interpretation.

But if an animal has non-zero moral value, if animals truly "matter", as stated in the discussion document, then their life should have some value. In the same way we value

48 "Secrecy veil on animal tests", New Zealand Herald 31 August 2002.
human life because of autonomy, cognitive ability etc., animal life has value.

MAF have argued that using animals for research, testing and teaching has no more moral implication than using animals for food or killing them because a home cannot be found at a shelter. But part of the intent of the Act is to reduce numbers of animals (section 80(2)(b) (i)), and this is contradicted by not giving moral weight to their lives.

Also in the case of meat eating, for example, society is not giving animals zero moral value. Rather it is implied that a cost benefit analysis has been performed, and that in all cases where animals are killed for food, their moral value is overridden by the benefits. But this would be begging the question when it comes to research, testing and teaching because the purpose of the AEC is to make a case-by-case cost-benefit analysis and not to simply assume that any experiment can justify the death of animals.

In 2003 NAEAC recommended the Minister seek an amendment so killing is taken into account. The minister recommended MAF undertake policy analysis on the issue. This recommendation needs to be translated into action.

**Supposedly “humane” deaths of animals must be included in the cost benefit analysis in Part 6 of the Animal Welfare Act.**

**The cost-benefit analysis - consideration of “disbenefits”**

Presently consideration of “hazards” is only to the animals. However, other harms could result from either the experiment itself or the use to which it is being put and this also needs to be taken into account. For example, some experiments designed to test new pesticides, should also look at the harm the pesticide may cause.

This would be in keeping with other bodies making decisions on policy. The Royal Commission on genetic modification for example considered a whole raft of harms to cultural sensibilities from GM animal research. The way Animal Ethics Committees deal with “disbenefits” contrasts with Human Ethics Committee deliberations. I was an observer at a Human Ethics Committee meeting for Wellington, which discussed a “disbenefit” for a protocol on sampling DNA from Pacific people to determine ancestry. Concerns were raised that it may conflict with present Maori beliefs about ancestry, even though this particular alleged harm would not be directly to the humans being experimented on.

**The cost benefit analysis - Opportunity costs**

This goes further than simply evaluating the cost-benefit analysis of a particular experiment, and raises concerns over central strategy for research funding. As such, a central body should give advice on these issues. There are regulatory precedents in other areas. For example, when considering approval for field trials on genetically modified onions, ERMA took into account lost opportunity for organic agriculture research if GM

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50 Morris (2001)
onion trials were allowed\textsuperscript{51}.

An example of where opportunity costs could have been better applied is in the debate on xenotransplantation. The bioethics council in 2005 gave a cautious go-ahead to allowing organ transplants from pigs because it would help with the shortage of organs for transplants. Missing was any discussion of how an “opt out” scheme could also ease shortage of organs, with fewer negative consequences. It can be seen therefore, that the cost-benefit comparisons were not animal life vs. human life, because the opt-out system would also save human life.

The comparison is also not even animal life vs. rights of relatives of opt out donors (i.e. human sensibilities), because xenotransplantation also offends human sensibilities, independently of the animal welfare concerns (i.e. mixing \textit{Mauri} of species and mixing natural kinds is anathema for some \textit{Maori} and Christian groups respectively). So the only cost-benefit comparison is between animal lives and maximising profits for big pharma. This is against the purpose set out in Part 6 of the Act.

Other examples where opportunity costs were not taken into account include:

- A number of experiments from 1996-2000 on sheep cellular immunity conducted by operations on sheep intestines and inserting parasites. Ways of controlling parasites could have been achieved by breeding experiments, or by low-tech vaccinations or field experiments\textsuperscript{52}.

- Painful cloning of a rare breed of cow ostensibly to refine methods for conservation of wild mammals. A better use of resources for this purpose would be to protect habitat destruction in areas of high diversity (including New Zealand)\textsuperscript{53}.

\textbf{The cost-benefit analysis – corporate profit maximisation is not a “benefit”}.

If animals are to pay the ultimate cost in terms of suffering and death, then at the very least, their suffering should lead to societal advances. In the minds of many of the public, animal experimentation is only acceptable if it leads to improvements in human health\textsuperscript{54}. The cost benefit equation used by the Animal Ethics Committees, should therefore restrict itself to genuine societal benefits. Saving money should not be considered a benefit. If an experiment can be performed just as effectively using fewer or no animals, but at a greater cost, this should not be used as a reason for increasing suffering. Similarly, private profit should not be counted as a benefit (see above). This is akin to socialising losses (both losses to the animals, to whom their life matters, and to the general public who are concerned about animals), and privatising gains. This is simply unfair.

\textbf{The 3 R’s – Replacement}


\textsuperscript{52} Morris (2003)

\textsuperscript{53} Morris and Weaver (2003a)

The 3 R's of "replacement", "reduction" and "refinement", first proposed as a way of minimising suffering both by reducing the number of animals suffering and the intensity of the suffering are an integral part of the cost benefit analysis and the purpose of the Animal Welfare Act.

Section s80(2)(b) states that the purpose of Part 6 of the Act is to promote efforts to:

- Reduce the numbers of animals used to the minimum necessary;
- Refine techniques to minimise harm and maximise benefits; and
- Replace animals with non-living or non-sentient alternatives where appropriate.

The regulations surrounding animal experimentation need further tightening to ensure that consideration of the 3R's is not merely empty rhetoric but is something that Animal Ethics Committees, NAEAC and others involved in regulation actually take seriously.

When considering the first "R", that of "replacement", it is apparent that very little consideration of alternatives is required. AEC approval forms obtained under the Official Information Act reveal that very little space is provided for researchers to justify why animal are required; it is enough simply for the researcher to say that alternatives are not practicable.

There is also little appreciation of recent findings from systematic reviews, that much applied medical research owes very little, if anything at all, to animal experiments. A number of medical fields where animal testing supposedly provided information on human conditions were reviewed recently, and the authors concluded that there was no evidence that animal studies had made any contribution. This is backed up by theoretical biochemistry; drugs and diseases act at the cellular and molecular level, which varies greatly between animal species, and even individual humans.

If AEC's are serious about consideration of non-animal alternatives, then researchers must be required to provide full justification as to why alternatives are not being considered, instead of simply making a blanket statement to the effect that none are available.

**The 3 R's - reduction**

55 Examples are "severe suffering" work on blood pressure by Simon Malpas from the University of Auckland (AEC No. 78-98, Sept. 1998), work on alcoholism in rats by Susan Schenk from Victoria University of Wellington (AEC no. 2001-R1, March 2001), work by AgResearch scientists inserting tubes into sheep and infecting them with parasites (Project proposal no. 790, January 2003), and a study on bone surgery in sheep by John Schofield of the University of Otago (AEC no. 17/00, February 2000). All these AEC forms are available through the Official Information Act.


58 "Glisto chief: our drugs do not work on most patients." *The Independent* (8 December 2003).
Experimenter Alan Goldenthal made a complaint to the Science and Education Review Committee in 2009 about unnecessary duplication that goes on in animal experiments in New Zealand. I have also published several examples of animal experiments in New Zealand where pointless duplication has taken place, including many by Christian Cook using a painful “thermal stimulus” on sheep. 

Animal experimenter Michael Festing has long pointed out the need for rigorous statistical analysis including power analysis before conducting experiments, to minimise the number of animals required to obtain statistically meaningful results. At present there is no legal requirement for researchers to conduct power analyses to determine minimum sample sizes, nor to conduct a systematic review to determine whether the planned experiment has been conducted before or whether animal research has been effective in adding to knowledge.

A systematic review of previous research, and a power analysis should be a prerequisite before an Animal Ethics Committee can approve an experiment. This needs to be written into the legislation.

In addition, issues of commercial sensitivity often mean that experimental results are not published, and therefore are duplicated by other companies at a cost of great suffering to animals. Minister Anderton considered that such practice was justified on the basis that it maximises corporate profits. However, this undue consideration of financial gain is contrary to the intent of Part 6 of the Act, whereby suffering to animals must be weighed up against genuine benefits to society, not profits to private corporations. Increasing profits to corporates has no bearing to what is best for society as a whole, and indeed often simply serves to perpetuate inequalities, which have detrimental effects on society as a whole, including animal welfare.

Results from animal experiments approved under Part 6 of the Act must be made available to other researchers. The welfare of animals must take precedence over corporate intellectual property in this regard.

The 3 R’s - Refinement

Section 80(2)(b)(ii) of the Animal Welfare Act requires AECs to promote efforts “to refine techniques used in any research, testing or teaching so that the harm caused to the animals is minimised and the benefits are maximised.” Examples of refinement include preference for non-invasive use where possible, use of analgesics to avoid pain and ensuring high quality living environments for animals.

59 Morris and Weaver (2003a)
63 J. Marbrook,, D. Mollor, N. Wells, D. Bayvel and D Reid. (1994) “Challenges Posed by the Three Rs in Animal Welfare in the
On this basis section 100(d) of the AWA requires AECs to have regard to:

"The harm to, or the distress felt by, the animals as a result of the manipulation, and the extent to which that harm or distress can be alleviated by any means (including, where the pain and distress cannot be held within reasonable levels, the abandonment of the manipulation or the humane destruction of animals)."

**Pain relief:** There is no enforceable "bottom line" requirement for anaesthesia or analgesia. The *Good practice guide for the use of animals in research, testing and teaching (2010)* states that:

"*Investigators must assume that animals experience pain in a manner similar to humans. Decisions regarding the animals' welfare must be based on this assumption unless there is evidence to the contrary*"

The Guide goes on to give useful instructions for the avoidance of pain, including anaesthesia and post-operative pain relief. However this direction provides guidance only and has no legal status as a regulation under the Animal Welfare Act. Although the Animal Welfare Act requires Codes of Recommendations to be given legal standing as Codes of Welfare within 3 years, this has not been done.

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**The Good practice guide for the use of animals in research, testing and teaching (2010) must be immediately given legal status as a Regulation under the Animal Welfare Act.**

Researchers may withhold pain relief either deliberately or through lack of skill. Deliberate withholding is because of the perception that the anaesthesia or analgesia will interfere with the experiment. Lack of skill is a problem because veterinary anaesthesia is a specialised discipline. It requires knowledge of how to control pain in different species, and understanding how to recognise when animals are in pain, and researchers often do not have these skills.

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**It should be a legal requirement that in all experiments, anaesthesia and analgesia must be given at least to the same standards as that provided to companion animals being operated on, and that it must be administered by personnel with training in veterinary anaesthesia.**

**Note:** In the UK the law states that "animals must not be subjected to severe pain, distress or suffering that cannot be alleviated" and as a result the Secretary of State is not permitted to licence any procedure likely to cause severe pain or distress that cannot be

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*Twenty-First Century: Ethical, Educational and Scientific Challenges* in ANZCCART (eds) *Proceedings of the ANZCCART Conference held at the School of Medicine, Christchurch, NZ, April 1994. (ANZCCART, Wellington, 1994).*

64 Section 10(2A) of the Animals Scientific Procedures Act 1986
alleviated\textsuperscript{65}. In practice this requires all experiments to be carried out under anaesthesia unless anaesthesia itself would be more traumatic to the animal than the experiment.\textsuperscript{66} This requirement goes a significant way towards eliminating altogether what would be our “very severe suffering” category, and perhaps some projects within our “severe suffering” category. Until pain relief is made a mandatory requirement, there is no way to make sure that all experiments undergo a refinement process so that pain levels are kept to the minimum possible.

**End points:** The end point of many experiments (eg. LD50 toxicity experiments, tests on vaccines) is death. In other words animals are monitored until some or all of them die. But often this is not necessary. Toxins and disease can be detected in its early stages\textsuperscript{67}. The LD50 toxicity test is fraught with problems and has been considered to be scientifically flawed since at least the 1980s\textsuperscript{68}. It was phased out by the OECD Chemical Committee in 2000, and should be banned in New Zealand.

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A ban on the LD50 test and a requirement for non-lethal end-points needs to be written into the legislation.

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Q27: Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders

Anything that can increase the ability of the inspectorate to enforce the Animal Welfare Act, and to generate extra revenue through fines, has to be a good thing, and I support it.

Q28: What are the risks and benefits of these proposals. Can you think of any missed opportunities or unintended consequences?

The benefits are to the animals. Abusers will of course not benefit, but like all criminals they should think about this before they offend.

Q29: What impact will the proposed changes have on you and/or your organisation or sector?

See answer to Question 11.

Q30: Do you agree with the proposal to make drowning a land animal an offence.

Definitely. Though it does appear hypocritical given that fish are drowned in huge numbers during commercial fishing operations. However a double standard is still better than no standard at all, and putting this provision in the law will raise awareness of cruelty in other sectors like commercial fishing.


\textsuperscript{66} Animals Procedures Committee Review of the Cost-Benefit Assessment in the Use of Animals in Research, (2003) 54


Q31: Do you agree with the proposal to clarify that wilful and reckless ill-treatment offences apply to animals in a wild state?

They should certainly apply to any animals we interfere with. There is no reason to suppose that wild animals feel pain or other emotions any less than domesticated ones. And unlike domestic animals, they become stressed and fearful after any handling, even if no additional manipulation takes place.

The proposal is to disallow any act of cruelty “that goes beyond acceptable practices when hunting, fishing or controlling pests”. As written this is too vague to be effective, as offenders can always argue that what they are doing is “acceptable”.

Acceptable practices for killing wildlife therefore need to be promulgated as regulations, as described in Section 4.3 of the Discussion Document.

Q32: What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

See answer to Question 28.

Q33: Do you have any comments on any of the technical amendments proposed in table 1?

In order, by row in the table.

Row 1: Whatever the outcome of any court proceedings, there MUST be provision made to look after the animals at the centre of the dispute, and to hand them over to a reputable care-giver if required.

Row 2: Support. But if the government is interfering with operational matters within organisations like the SPCA, then the government should also provide adequate funding for these organisations (see Question 34 below).

Row 3: No comment

Row 4: Support. But see proviso in row 2 above.

Row 5: Oppose. In the interests of transparency, meetings of NAWAC and NAEAC (and Animal Ethics Committees) should be open to the public. My experience of getting anything through the Official Information Act concerning animal abuse, is that officials will use every excuse covered in the statute to prevent it being transmitted. These excuses are frivolous and vexatious and are usually disallowed by the Ombudsmen, but it still means a huge waste of my resources, as well as unnecessary delays.

Rows 6–11: Support for reasons given in the discussion document.
Q34: Do you have any other comments of feedback not covered by these questions.

Funding for animal welfare enforcement: Recently, in response to public knowledge and pressure, animal welfare has slowly started to become something that our government is taking seriously. Examples are the phasing out of sow stalls, and the Animal Welfare Amendment Act 2010 that increased penalties and added new offences. This trend can only be a good thing as far as animals are concerned.

However, in order for these new laws, or any of the laws proposed in this submission, to have any effect, there must be adequate funding for the inspectorate so it can monitor alleged offences, then gather evidence and prosecute offenders.

At the moment, funding for animal welfare inspections is pathetic. Animal production earns 21 billion dollars per year for New Zealand, but we spend only 0.03% of that in monitoring and enforcing animal welfare. If we are serious in our assertion that animals "matter", then this must be increased. Funding could easily be obtained through a levy on the animal products industries, a levy by convicted offenders, or by savings in other areas such as roads and chief executive salaries.

Most animal welfare investigations and prosecutions are carried out by the SPCA and its umbrella group the RNZSPCA. This is the ONLY statutory enforcement agency in the country that has to rely on public donations to carry out its statutory functions. It is no wonder therefore that most of the time it cannot afford to investigate or to prosecute. Can you imagine the reaction of the public if the Police had to run a cake stall before they could prosecute someone? Or the Quarantine Service – or Customs – or Fishery Officers – or CITES inspectors, or even council inspectors? Why therefore are animals held in such low esteem that this is considered acceptable?

Funding for the SPCA and the MPI animal welfare inspectorate needs to be raised to adequate limits so that they can afford to investigate all complaints, and prosecute all cases that come before them.

Imported cruelty: As has already been discussed in my reply to question 26 regarding the import of genetically modified mice, there is a regulatory gap in the legislation in that it does not cover animal abuses that originate outside our borders, but are perpetuated inside them.

One example of such abuses is the production of foie gras. This is produced by force feeding ducks and geese to such an extent that their livers malfunction. Indeed, it is illegal to call the product foie gras in France unless the liver is engorged to such an extent that it is diseased. As a result, mortality rates among force fed ducks is around 10-20 times that of ducks kept in otherwise identical conditions but not force fed. Ducks find the force feeding to be aversive, and the process can also lead to tissue damage in the oesophagus and possibly joint pain through the legs being forced apart to make room for the engorged
Foie gras production is illegal in many countries and states around the world, the most recent jurisdiction being California, which banned both production and sale from July this year. The Ministry of Primary Industries also confirmed that force feeding would be illegal in New Zealand under the Animal Welfare Act.

If this is the case, then it is inconsistent to allow the importation of a product that cannot be produced here for reasons of animal cruelty. There is no evidence that French ducks or geese suffer any less than New Zealand ones, and what is illegal to do on our soil should also be illegal to import.

Foie gras production is only one example of imported cruelty, though it is one that has been highlighted recently on the national media because of the action of Speak Up for Animals in protesting outside the only Wellington restaurant that we are aware of that still sells it. However, there are other instances of imported cruelty, the most important of these in terms of magnitude of imports arguably being pork products.

When sow crates are finally banned in 2015, imported pork from countries like China that still use sow crates should also fall under this category. It is particularly important that these pork products are banned, because allowing imports from places where animal welfare is not a concern means that the imported product would be cheaper. This not only gives importers an unfair advantage over our own producers, who have to comply with the law, but it also means that our own ban on inhumane practices will have very little effect on animal welfare since consumers will just buy the cheaper imported product.

A ban on imports will inevitably result in a legal challenge from importers under international World Trade Organisation (WTO) legislation. However, the rules do allow restrictions on imports where "public morals" are concerned, and where the products are not truly "like" each other because the production methods differ. These provisions have been invoked in cases such as the European Union ban on products containing cat or dog fur or Canadian products derived from seals.

A ban on imported cruelty will require more wide reaching legislative changes than a simple amendment to the Animal Welfare Act, given that it has implications on international trade and on so-called "free trade" agreements. However, if we are serious about reducing the amount of suffering experienced by animals, this cannot be used as an excuse to simply ignore the issue.

Appendix:

70 Broadcast on TV3 Frontline, 11 September 2012.
Author's publications cited in this submission. In reverse chronological order, then alphabetically.


**Photograph caption:** Vivisection experiment on sheep in Upper Hutt, New Zealand. This photograph was obtained through the Official Information Act, with some difficulty (see answer to question 26). A cannula is placed inside the intestine of the sheep and the sheep is "challenged" with internal parasites. In some cases, a "cut and paste" operation is performed, whereby a loop of intestine is cut out and the two ends sown back together. The cannula is then placed in the loop (see Morris 2003 for further description).
A recovered sheep tethered in a crate after surgery, with fluid from the loop being collected into tubes.
Tasman District Gundog Society

16th September 2012


The Tasman District Gundog Society promotes the use of working gundogs.

Certain breeds of gundogs have thin tails with little hair coverage, these breeds whilst working wag their tails hard, in NZ conditions these tails can be quickly damaged at the fine tip. This is why these breeds have their tails shortened. The fine end of the tail is legally removed by banding method prior to the first 72 hours of the pups birth.

Tasman District Gundog Society see no reason to change this regulation. The Society is concerned for the welfare of traditionally docked breeds of working gundogs if tail shortening is banned.

The Society also understands that most livestock suffer some pain and discomfort through tail docking, velvet removal, ear tagging etc. and strongly feel that if a dog cannot have a tail shortened in the least painful method available, within 72 hours of birth when a pups nervous system in not fully developed, then it is hypocritical of the Govt to allow procedures on farm animals; and to allow the ruling of a Govt Select Committee not to ban docking made just a few years back be overturned.

The Tasman District Gundog Society supports the NZ Council of Docked Breeds and the NZ Kennel Club in their submissions.

Yours sincerely

President
Tasman District Gundog Society
SUBMISSION TO ANIMAL WELFARE STRATEGY AND LEGISLATION REVIEW

I, ____________________________, make this submission on behalf of Te Whare o te Kaitiaki Ngahere Inc. regarding Amendments to the Animal Welfare Act 1999

Te Whare o te Kaitiaki Ngahere agrees with the premise in the Consultation Document that “It matters how animals are treated – it matters to the animal and it matters to us”.

We support the two outcomes aimed for – better care for animals – avoiding “unreasonable harm to animals affected by our activities” and “safeguarding our reputation as a responsible agricultural producer”.

Q31. Te Whare o te Kaitiaki Ngahere submits that wilful and reckless offences should absolutely be applied to animals in a wild state. Animals are sentient beings, whether they are pets, livestock or wild – they are no less sentient. They are in no less need of legislative protection against wilful ill-treatment simply because they are not owned by somebody. We submit that “extreme conduct that goes beyond acceptable practice when hunting, fishing or controlling pests” should be subject to a charge of ill-treatment and agrees that it is important to “ensure that generally accepted fishing and hunting and pest management activities are not prevented by this proposal”. Then it is just a question of what is “acceptable practice” and “generally accepted” by whom?

Te Whare o te Kaitiaki Ngahere members submit that “generally accepted” methods of pest management needs to be clearly defined with consultation from ordinary New Zealanders, not just those in the industry, particularly with regards to the use of poisons. For example, one extensive survey in South Westland showed that 92% of the population were against the aerial use of 1080 poison (for whatever reasons) – yet their voice means nothing.

Industry leaders, for example the Animal Health Board (on behalf of the government), may find it acceptable for wild animals, who after ingesting 1080 baits, suffer an excruciating torture, bleeding from every orifice and organ over a period of many, many hours. Research by Kate Litten of MAF included in P.393 Appendix C of the ERMA Review of 1080 stated that “time to death for possums after a single oral dose of 1080 5.0 - 97.0 hours”. That is over 4 days for some possums to die. Also in the ERMA Appendix: “time to death for wallaby pouched young 11.5-80.5 hours” and “time to death for rabbits after a single dose of 1080 3.0 – 44.3 hours”. Then there are the non-targeted species such as sheep that took up to 4 days to die; blackbirds who took up to 30.5 hours to die; grass frog 36.8 – 98.3 hours to die; and “time to death for bluetongued lizard 14.4 – 522.5 hours”. By comparison death by drowning would be positively fast and painless.

There is plenty of photographic evidence (on web sites such as www.thegrafsboys.org) of 1080 poisoned animals who have eventually and obviously agonisingly expired; contorted and horrifying on the exterior, their organs exploded inside them. Our members do not find this acceptable. We believe this is animal cruelty on an unimaginable scale. Just because the suffering of these animals is hidden away in the bush where people do not witness it, does not justify that suffering.

We believe if ordinary people were aware of the prolonged and agonising amount of suffering 1080-poisoned animals are subjected to New Zealanders would not class this type of pest control as “acceptable practice”.

Thus, Te Whare o te Kaitiaki Ngahere submits that as part of the clear and directly enforceable standards (Q5) there should be a recognised maximum time period of potential suffering prior to mortality when choosing poisons to kill pests. Just as gin traps were outlawed for their perceived inhumanity, we submit that 1080 and other agonisingly slow-acting poisons inhumane in the extreme and are not acceptable as a method of pest control.

Another question of “acceptable practice” when it comes to the use of 1080 laid by air or hand, is the unnecessary long suffering death of so many non-target animals – both wild and non-wild. We already have the technology, science and skills to target species such as possums more precisely using such things as feratox and traps. We need to take firm action and make a clear and enforceable rule with regard to decimating non-target populations in order to “avoid unreasonable harm to animals affected by our activities”. People need to be held accountable when, for example, 77% of the local population of Kea are wiped out through 1080 poison. Species may be extinguished through such poor decision making – the ultimate pinnacle in terms of man’s ill-treatment of animals.

We believe that “practicality” and “economic impact” (Q8.) should not be added to the set of criteria in this case – the humanity of our treatment of these sentient creatures should be tantamount – even in their extermination. While animals such as possums are commonly demonised – they did not ask to be here and they do not deserve to be treated with barbarism.

The discussion document refers to ”safeguarding our reputation for integrity”. Te Whare o te Kaitiaki Ngahere submits that New Zealand’s reputation is under threat (Q32) – we simply cannot claim to have a caring, humane attitude towards animals when we allow the wholesale unnecessary and prolonged suffering of so many of our wild animals. We submit that if the rest of the world should become aware of the extent of the suffering being perpetrated here, it would not bode well for our reputation, particularly since the ill-treatment is being inflicted by our government.

The government’s number 1 reason for demonising the possum as a pest is due to a belief that possums spread bovine tuberculosis to cows and the perceived threat this would cause to our agricultural exports. Te Whare o te Kaitiaki Ngahere members believe that it is bad farming practices such as over stocking which brings the bovine tuberculosis to the possums who then become carriers. If these bad farming practices were targeted instead of the possum the problem of BTb would disappear, as would the unnecessary suffering and slaughter of tens or hundreds of thousands of animals. Inoculation of cows for this disease would also have the same result.

Te Whare o te Kaitiaki Ngahere submits that should people in our overseas markets become aware of the wholesale and unnecessary torture of the furry, cuddly-looking possum (not to mention all the other casualties including iconic endangered species like the Kea) because of farming, they may think twice about buying our farm products. The effect would be the denigration of our “reputation as a responsible agricultural producer” and have the opposite to the desired outcome of these Amendments.
How could anyone in New Zealand keep a straight face and say the Animal Cruelty matters to this country.

According to the our own SPCA between 20,000 and 40,000 deer are deliberately targeted with the 1080 toxin delivered over our forest by helicopter via these three Government Agencies Animal Health Board, Department Of Conservation and Regional Councils.

Death for a deer takes up to three days of excruciating agony according to our own SPCA’s Robyn Kippenberger.

This organisation that knows all about 1080 also accuses DOC of drift netting the forest causing untold deaths of both native and introduced animals.

So please spare us the fake sympathy that you put on your faces when it suits your purposes.

Thames Landcare