

Subject: [Fwd: Letter re four orcas exported to Canary Islands]
From: Michael Payne <Michael.Payne@noaa.gov>
Date: Fri, 12 Nov 2010 10:29:55 -0500
To: Jennifer Skidmore <Jennifer.Skidmore@noaa.gov>

fyi

----- Original Message -----

Subject: Letter re four orcas exported to Canary Islands
Date: Thu, 11 Nov 2010 10:25:15 -0500
From: Naomi Rose <nrose@hsi.org>
To: Michael Payne <Michael.Payne@noaa.gov>, Chester Gipson
<chester.a.gipson@aphis.usda.gov>
CC: Tim Ragen <tragen@mmc.gov>, madeleine.bordallo@mail.house.gov, Susan Millward
<susan@awionline.org>, Courtney Vail <courtney.vail@wdcs.org>, Suzanne Michele Allee
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Dear Mr. Payne and Dr. Gipson:

The attached letter is sent on behalf of The Humane Society of the United States, the Animal Welfare Institute, the Whale and Dolphin Conservation Society, and Suzanne Allee, a former employee of SeaWorld Texas. If you have any questions, please let me know.

Sincerely,
Naomi Rose

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November 11, 2010

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Sent as .pdf via email

Dear Mr. Payne and Dr. Gipson:

I am writing on behalf of The Humane Society of the United States (HSUS), the Animal Welfare Institute (AWI), the Whale and Dolphin Conservation Society (WDCS), and Suzanne Allee, a former SeaWorld employee, in regard to four orcas (*Orcinus orca*) owned by SeaWorld and exported to Loro Parque (Tenerife, Canary Islands) from the United States in February 2006. We believe the continued maintenance of these four orcas at Loro Parque is a clear violation of §104(c) of the Marine Mammal Protection Act (MMPA). Your offices are aware of our concerns regarding this situation, as both have received a report written by Ms. Allee, who was employed at SeaWorld Texas in the mid-2000s and then worked for Loro Parque from 2006 until 2009. We met with Mr. Payne regarding this report and Ms. Allee's experiences and we hope to meet with Dr. Gipson in the near future as well.

It is clear that both the Loro Parque facilities and its provision of animal care at those facilities are inadequate, and there is no indication that the problems will be remedied in the near future. We believe that the four orcas, Keto, Tekoa, Kohana, and Skyla, are in imminent danger of declining health and even death. Similarly, the personnel at Loro Parque, where one trainer has been seriously injured by Tekoa and one has been killed by Keto, are also at risk from the facility's failure to meet the standards for care and handling required under the MMPA,

including requirements of the Animal Welfare Act (AWA) that have been incorporated into the MMPA. It is critical that the National Marine Fisheries Service (NMFS) and the Animal and Plant Health Inspection Service (APHIS) act to avert further tragedy. In this letter, we provide evidence of failures by Loro Parque to meet care and handling standards for marine mammals and propose enforcement action by NMFS and APHIS.

Legal Requirements for Marine Mammals Exported for the Purpose of Public Display

The MMPA requires receiving facilities to which a marine mammal is exported for public display to meet the same requirements as domestic facilities importing or taking a marine mammal for the purpose of public display.¹ For domestic facilities applying for a permit to take or import marine mammals for public display purposes, those requirements are as follows:

- (i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;
- (ii) is registered or holds a license issued under 7 USC 2131 et seq. [the Animal Welfare Act]; and
- (iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.²

While the U.S. Department of Agriculture, which licenses facilities under the AWA, does not have jurisdiction to license foreign facilities, the MMPA provides that “[n]o marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.”³ Therefore, the MMPA requires that foreign facilities receiving an exported marine mammal for public display comply with standards comparable to those for AWA licensure.⁴

The MMPA provides clear authority for NMFS to take enforcement action, including seizure of marine mammals, in the event that the foreign facility fails to meet these requirements. If the Secretary of Commerce, in concurrence with the Secretary of Agriculture, finds that a foreign facility to which a marine mammal has been exported no longer meets, and is unlikely to meet

¹ 16 U.S.C. §1374(c)(2)(C): “A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—
(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A) . . .”

² 16 USC §1374(c)(2)(A)

³ 16 USC §1374(c)(9)

⁴ 9 CFR Parts 2 and 3

in the near future, AWA licensure standards as required under §104(c)(2)(A)(ii) of the MMPA, then the Secretary may seize the marine mammals held by the foreign facility and may cooperate with other persons authorized to hold marine mammals under the MMPA for disposition of any animals seized.⁵

To ensure that foreign facilities displaying marine mammals exported from the United States do not undermine the conservation purpose of the MMPA, and to allow for enforcement of violations in foreign jurisdictions, NMFS regulations provide that the relevant foreign government must certify prior to export that:

- (i) The information set forth in the [export] application is accurate;
- (ii) The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and
- (iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.⁶

Thus, when the four orcas identified above were exported to Loro Parque, the relevant foreign authority must have agreed to recognize NMFS and APHIS findings and cooperate with enforcement action by the agencies.⁷

As discussed in detail below, it is clear that Loro Parque continues to be in violation of multiple AWA standards that negatively affect the welfare of the four orcas and the safety of their trainers. Therefore, it is imperative that NMFS and APHIS undertake an immediate investigation and make an official finding as to Loro Parque's non-compliance so that NMFS can take action to seize the orcas or work with SeaWorld to arrange for their repatriation to the United States.

Ongoing Violations of Animal Welfare Standards at Loro Parque

It is clear from Ms. Allee's report that Loro Parque failed to meet standards comparable to those required for licensure under the AWA at the time the four orcas were exported in 2006 and at the present time, as required by the MMPA. Therefore, for NMFS and APHIS to meet their obligations under the MMPA, the agencies must now take action to secure the welfare of these animals and the safety of Loro Parque personnel.

The following are the Loro Parque violations of AWA regulations that were occurring at the time of export and/or are ongoing, which demonstrates that the facility "is not reasonably likely

⁵ 16 USC §1374(c)(2)(D)

⁶ 50 CFR §216.33(b)(2)

⁷ We would like to request a copy of the comity letter provided to NMFS by Loro Parque or the government of Spain/the Canary Islands at the time of export. While we accept that EU regulations are comparable to U.S. regulations, we would like to see what commitments Spain made regarding enforcing those regulations.

to meet" AWA standards "in the near future," thus necessitating enforcement action by NMFS and APHIS.

1) Loro Parque Facilities Are Not Structurally Sound

The AWA implementing regulations require that facilities housing marine mammals be structurally sound:

9 CFR §3.101 Facilities, general (emphasis added):

(a) *Construction requirements.* (1) Indoor and outdoor housing facilities for marine mammals **must be structurally sound and must be maintained in good repair** to protect the animals from injury, to contain the animals within the facility, and to **restrict the entrance of unwanted animals AND**

(3) All surfaces in a primary enclosure must be constructed of **durable, nontoxic materials** that facilitate cleaning, and **disinfection as appropriate, sufficient to maintain water quality parameters** as designated in §3.106. **All surfaces must be maintained in good repair** as part of a regular, ongoing maintenance program.

From Ms. Allee's report: "[L]ess than five weeks after the orcas began inhabiting the new pools at [Loro Parque's] Orca Ocean (one show pool, two back pools), the [show] pool and the show had to be shut down because the orcas were tearing the coating off the walls and ingesting it. The owner of the park, Wolfgang Kiessling, chose to use a relatively new material called MetFlex, which had never been used before in orca pools, including any Sea World [sic] pool. And in his rush to open the show (which had already been pushed back from Kiessling's preferred date of December 17th, 2005, the 23rd anniversary of the opening of [Loro Parque]), the park ignored the technical advice of the MetFlex supplier and sprayed the coating onto the walls and floors of the pools while the cement was still damp from a recent rain." This was a clear violation of §3.101.

Whatever documentation Loro Parque provided to APHIS regarding the main enclosure, this information did not clarify the enclosure's lack of readiness on the date of export. From the outset, then, SeaWorld and Loro Parque were in violation of the requirement that the receiving facility meet comparable standards, in a way that directly threatened the animals' health. This situation was not corrected for *four years*, necessitating multiple endoscopic procedures on the whales to remove Metflex (and other) debris from their stomachs. Because the whales had developed the habit of pulling strips from the pool walls, they continue to pick at the new material (epoxy) even though the Metflex has finally been replaced, damaging their teeth. To date the trainers at Loro Parque have been unable to correct this behavior. This is therefore an ongoing violation that is unlikely to be remedied in the near future, which threatens the health of the animals and demands immediate action from the agencies.

In addition to the improper pool coating, the manner in which pool areas and the public viewing areas are cleaned may be in violation of the AWA. The metal beams that support the

panels of pool glass are cleaned with acid that is washed off with pressurized water that inevitably enters the pool water, potentially negatively affecting water quality. Therefore, this may be a violation of the requirement to maintain water quality parameters; how this cleaning method affects the pool water clearly must be determined. There is also no written protocol or professional training provided to staff on the appropriate methods for cleaning a facility designed to hold cetaceans.

Finally, Loro Parque continues to be in violation of the requirement in §3.101 that unwanted animals be prevented from entering the animal housing area. This requirement is designed to protect marine mammals and their enclosures from pathogens and pests that could be detrimental to the animals' welfare. According to Ms. Allee, Loro Parque's neighbor is a banana plantation and has cats. These cats are able to enter the back pool area through the perimeter fencing and regularly do so.

2) Loro Parque Employees Are Inexperienced

The AWA implementing regulations require facilities housing marine mammals to employ an experienced staff capable of training and caring for marine mammals:

9 CFR §3.108 Employees or attendants (emphasis added):

(a) A sufficient number of adequately trained employees or attendants, responsible to management and working in concert with the attending veterinarian, must be utilized to maintain the prescribed level of husbandry practices set forth in this subpart. Such practices must be conducted under **the supervision of a marine mammal caretaker who has demonstrable experience in marine mammal husbandry and care.**

(b) **The facility will provide and document participation in and successful completion of a facility training course for such employees.** This training course will include, but is not limited to, **species appropriate husbandry techniques, animal handling techniques,** and information on proper reporting protocols, such as recordkeeping and notification of veterinary staff for medical concerns.

(c) **Any training of marine mammals must be done by or under the direct supervision of experienced trainers.**

(d) **Trainers and handlers must meet professionally recognized standards for experience and training.**

While several Loro Parque caretakers, its curator, and its veterinarian were sent to SeaWorld in advance of the export to train in orca care and handling, most of these individuals (including the curator and the veterinarian) left the employ of Loro Parque within months of the opening of the Orca Ocean exhibit. Therefore, there is currently an insufficient number of qualified individuals employed by the facility to care for the orcas, a clear violation of the AWA that is unlikely to be remedied in the near future.

As clearly described in Ms. Allee's report, trainers are often hired "off the street," with no animal handling experience at all, let alone orca handling experience. The orcas' current veterinarian has no special training in orca care. There is no curator onsite at all anymore and this has been the case since early 2007. Therefore Loro Parque is in violation of all sub-sections of §3.108 and has been so for several years. The current co-supervisor of Orca Ocean was sent to SeaWorld for training, but only for two weeks in November 2008. He was not one of the trainers sent to SeaWorld prior to the export (when the training was of many months duration) and when he was promoted to co-supervisor in summer 2009, he had less time working with the orcas than any of the then-current trainers, even the apprentices.

The negative impact of this collective lack of experience on trainer safety is obvious: in only 4.5 years, this facility has suffered one trainer's serious injury and one trainer's death. The negative impact on whale welfare is unfortunately less obvious, but from Ms. Allee's description, no doubt equally serious. In general, the lack of experience in the training staff has led to these four whales becoming "feral" and at times literally uncontrollable, confusing them, frustrating them, and finally endangering their psychological (and undoubtedly ultimately their physical) health. And having four adolescent whales without any clear guidance on "acceptable" behavior without a doubt endangers the safety of the trainers.

The lack of experienced training staff may also be resulting in an ongoing violation of 9 CFR §3.105, regarding proper feeding, as these trainers would be highly unlikely to be able to "recognize deviations from a normal state of good health in each marine mammal so that the food intake can be adjusted accordingly."

3) Loro Parque Enclosures Are Unsafe

The AWA implementing regulations require that marine mammals be housed in enclosures that do not endanger their safety:

9 CFR §3.107 Sanitation (emphasis added):

(c) *Housekeeping*. Buildings and grounds, as well as exhibit areas, must be kept clean and in good repair. Fences must be maintained in good repair. **Primary enclosures housing marine mammals must not have any loose objects or sharp projections and/or edges which may cause injury or trauma to the marine mammals contained therein.**

The drain covers in the main enclosure at Loro Parque have not met this requirement. The animals, especially the two females, have been routinely cut and injured on the edges of these drain covers. In addition, modifications were made to the safety bars across the shallow "slide-over" openings between the back and main pools (metal projections were placed on the bars, to discourage the whales from attempting to enter the main pool even when the bars were in place) and as recently as autumn 2009, the younger male, Tekoa, seriously abraded his belly on these projections.

4) Loro Parque Houses Incompatible Animals in the Same Enclosure

The AWA implementing regulations require that marine mammals that are not compatible be housed separately:

9 CFR §3.109 Separation (emphasis added):

Marine mammals, whenever known to be primarily social in the wild, must be housed in their primary enclosure with at least one compatible animal of the same or biologically related species, except when the attending veterinarian, in consultation with the husbandry/ training staff, determines that such housing is not in the best interest of the marine mammal's health or well-being. However, **marine mammals that are not compatible must not be housed in the same enclosure.**

Loro Parque has failed to meet this provision as it applies to Tekoa, who has consistently been bullied by the other whales and often displays injuries from altercations. SeaWorld supervisor Brian Rokeach requested that this whale be returned to a SeaWorld facility to improve his welfare (see Ms. Allee's report). His request was denied. This is an ongoing violation that significantly threatens Tekoa's welfare, and there is no indication that it will be remedied in the near future.

5) Loro Parque Fails to Protect the Orcas From the Viewing Public

The AWA implementing regulations require that marine mammals on public display be adequately protected from the viewing public:

9 CFR §3.101 Facilities, general (emphasis added):

(a) *Construction requirements.* (2) All marine mammals must be provided with **protection from abuse and harassment by the viewing public** by the use of a sufficient number of uniformed or readily identifiable employees or attendants to supervise the viewing public, **or by physical barriers, such as fences, walls, glass partitions, or distance**, or any combination of these.

Loro Parque has no safety bar at the front of the slide-out ramp in the main enclosure to separate the animals from the public (one was installed, but the owner had it immediately removed because, as Ms. Allee recalls, he found it aesthetically displeasing, which indicates the facility has no intention of remedying this violation). This is especially a concern when the audience is entering and exiting before and after shows respectively, as the only thoroughfare goes directly past the unprotected slide-out and as the orcas are often kept in the main enclosure, and when visitors are taken on backstage tours. In terms of crowd control, the lack of a slide-out safety bar continues to be the biggest safety concern before, during and after shows, with many near misses, including a handicapped man in an electric wheelchair who fell backwards into the slide-out before a show in July 2009.

There are no staff members, barriers or one-way glass in the underwater viewing area, allowing visitors in this area (a tunnel between enclosures) to bang on the glass and interact visually with the animals. This unsupervised interaction (especially banging on the glass) has at times amounted to harassment and can have an adverse impact on the welfare of the animals. There is no indication that the facility intends to remedy this situation.

6) Loro Parque Has No Contingency Plans

The AWA implementing regulations require that facilities housing marine mammals have a plan for caring for animals in case of an emergency:

9 CFR §3.101 Facilities, general (emphasis added):

(b) *Water and power supply.* **Reliable and adequate sources of water and electric power must be provided** by the facility housing marine mammals. **Written contingency plans must be submitted to and approved by the Deputy Administrator** regarding emergency sources of water and electric power in the event of failure of the primary sources, when such failure could reasonably be expected to be detrimental to the good health and well-being of the marine mammals housed in the facility. Contingency plans must include, but not be limited to, specific animal evacuation plans in the event of a disaster and should describe back-up systems and/or arrangements for relocating marine mammals requiring artificially cooled or heated water. If the emergency contingency plan includes release of marine mammals, the plan must include provision for recall training and retrieval of such animals.

It appears that there is no emergency contingency plan for the orcas (or any of the other animals) at Loro Parque, nor is there any evidence that such a plan is in development. The Canary Islands is often subject to severe weather (windstorms, rainstorms, and hurricanes). In fact, Loro Parque, which is otherwise open 365 days a year, has had to shut down before because of severe weather. In addition, electricity has been and continues to be a problem not only for the park, but for the entire island of Tenerife. Several unlimited power sources were installed over time due to the erratic nature of electricity availability and the fluctuations due to power outages, but the burden of proof is on Loro Parque and SeaWorld to demonstrate to NMFS and APHIS that there are adequate sources of emergency power and an adequate contingency plan (given the power failures in the past and the severe weather that has affected the daily operations of the park).

7) Loro Parque Allows Dangerous Objects into the Orca Ocean Exhibit

The AWA implementing regulations prohibit facilities from providing marine mammals with potentially dangerous objects:

9 CFR §3.101 Facilities, general (emphasis added):

(g) *Enclosure or pool environmental enhancements.* **Any nonfood objects provided for the entertainment or stimulation of marine mammals must be of sufficient size and strength to not be ingestible**, readily breakable, or likely to cause injury to marine mammals, and be able to be cleaned, sanitized, and/or replaced effectively.

Several of the toys provided to the orcas at Loro Parque are in fact small enough to be ingested. Tekoa ingested a plastic trumpet that was accidentally dropped into the pool by a trainer and, although scheduled for an endoscope extraction, vomited it up hours before the procedure. This violation is clearly related to the lack of experience in animal care staff, and there is no indication that this problem will be remedied in the near future.

EU Regulatory Violations

The law in the European Union should have precluded the import of these orcas from the United States in the first instance. Council Regulation (EC) No 338/97 prohibits the import into the European Union of specimens of the species listed in its Annex A for primarily commercial purposes. Annex A includes all cetacean species. An import permit for a species listed in Annex A may only be issued if, among other conditions, the import is taking place for one of the purposes referred to in Article 8(3)(e), (f) and (g).⁸ Three research projects were guaranteed funding to support the import of the four orcas from the United States, serving as the main vehicles by which Loro Parque met the exemption.⁹ It is our opinion that it was not necessary to transport four orcas to the Canary Islands to enable this research to be carried out and, as the vast majority if not all of the research in question does not involve the orcas held at Loro Parque, the import should not have occurred.

Council Regulation (EC) No 338/97 also requires, concerning the import of Annex A specimens, that "the competent scientific authority is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it

⁸Article 8(3) grants exemptions to the prohibition on "the purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A" where the specimens "(e) are required under exceptional circumstances for the advancement of science or for essential biomedical purposes pursuant to Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (6) where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have been born and bred in captivity; or (f) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned; or (g) are intended for research or education aimed at the preservation or conservation of the species."

⁹Determining the presence of specific antibodies in *Orcinus orca* serum (Basilio Valladares, University of Laguna); analyzing parameters relating to the meaning of *Orcinus orca* vocalizations (Fernando Rosa, University of Laguna); development of *Orcinus orca* feeding models in the Straits of Gibraltar using stable isotopes (Renaud de Stephanis, Conservation, Information and Research on Cetaceans (CIRCE) (from letter dated 10 January 2006 to WDCCS from José Luis Herranz Saez, Ministry of Environment).

properly.” However, as noted above, conditions at Loro Parque proved far from “adequately equipped” to provide for the care and maintenance of these animals. This failure to comply with EU regulations supports NMFS’ seizure authority through the comity agreement as a means of rectifying a situation that should never have occurred in the first place.

Request for Enforcement

Ms. Allee’s employment position at SeaWorld and Loro Parque allowed her to be a fairly unrestricted witness to all of the above-described violations. Her report and the additional details outlined above are clearly sufficient to raise significant questions about Loro Parque’s standards and the degree to which SeaWorld and Loro Parque violated, and continue to violate, the export requirements under the law. We therefore request that the agencies immediately send a joint inspection team to Loro Parque to assess the current status of the facility and evaluate the extent of violations of AWA standards in order to make a finding required by MMPA §104(c)(2)(D). There is precedent for such a joint inspection team, to which APHIS lends its expertise in evaluating captive conditions to an inspection of a facility over which it has no direct jurisdiction, as one comprising a veterinarian from NMFS and a veterinarian from APHIS recently evaluated the conditions of a stranded dolphin at a rescue and rehabilitation facility in Mississippi.

Given the ample record of past and ongoing violations at Loro Parque, we believe it is unlikely that the facility will be willing or able to effectively remedy these violations to adequately improve the orcas’ welfare. Therefore, we request that NMFS prepare to make arrangements to repatriate the four orcas to the United States. Such relocation could either be done through NMFS’ seizure authority under the MMPA or in coordination with SeaWorld.

As noted earlier, §104(c)(2)(D) of the MMPA authorizes NMFS to seize animals from parties no longer in compliance, and not likely to become compliant in the near future, with §104(c)(2)(A)(i-iii). We have provided a strong body of evidence that Loro Parque does not meet standards comparable to those required by §104(c)(2)(A)(ii), *i.e.*, AWA regulations. Without prompt action from the agencies (and/or SeaWorld), the four orcas at Loro Parque face health declines and the trainers’ safety will continue to be compromised. Thus, we believe that NMFS has clear authority to seize the orcas exported to Loro Parque.

- Repatriate the Orcas to the United States Immediately

Recognizing that seizure of marine mammals is not a simple process, we urge NMFS to work with SeaWorld to remedy this problem by repatriating the orcas to the United States as soon as possible. While we believe strongly that SeaWorld has significant problems with its own orca program, clearly the staff there have more experience handling this species than do the staff at Loro Parque. While the husbandry of these four whales is currently problematic from a behavioral standpoint, SeaWorld has a moral and legal obligation to these animals and must act to secure their welfare. Despite the stress of a transport, returning them to conditions that

include exposure to adult whales who have had a more stable history and to trainers with considerably more experience and employment longevity (also leading to stability) will almost certainly improve their welfare immediately. It will also prevent outright any additional injuries or deaths among the inexperienced trainers at Loro Parque.¹⁰

Pursuant to the AWA, SeaWorld is required to comply with animal welfare standards for “any animals...or other premises used or intended for use in the business...”¹¹ Because SeaWorld maintains ownership of the orcas it exported to Loro Parque, and presumably retains the right to re-import the orcas for its own public display, SeaWorld continues to be responsible for ensuring that the “other premises” (*i.e.*, Loro Parque) where its animals are kept is in compliance with AWA regulations. Thus, SeaWorld is legally obligated to work with NMFS and APHIS to resolve this matter and secure the orcas’ welfare. In addition, even if these four whales were originally exported due to overcrowding at SeaWorld’s domestic facilities, given the recent deaths of three adolescent/adult whales at SeaWorld California and SeaWorld Florida, it appears that there is now room for their return.

Clearly if SeaWorld refuses to act, then the agencies must. The MMPA explicitly authorizes NMFS to “cooperate with other persons authorized to hold marine mammals under the MMPA for disposition of any animals seized.”¹² There are several facilities that are in a better position to care for these animals than Loro Parque. Shouka is a solitary whale held at Six Flags Discovery Kingdom in California, a facility with many years experience with orcas. Lolita is a solitary whale at Miami Seaquarium, a facility with as many years experience handling orcas as SeaWorld. Kiska and Ikaika (a former SeaWorld whale) are at Marineland Ontario, a facility designed for four whales. While none of these facilities is ideal from our perspective, we list them merely to clarify that disposition would not be an insurmountable obstacle to confiscation.

- Send At Least Two Experienced SeaWorld Trainers to Loro Parque

We believe that ultimately the return of these whales is the only acceptable solution, but recognize that an interim solution may be necessary to fully protect the orcas’ welfare. As a stop-gap measure, SeaWorld could replace the onsite supervisor it withdrew in April 2010 with a pair of experienced trainers for at least a twelve-month period, which would ensure that at least one trainer is always onsite, to improve the welfare of the whales and the safety of the trainers until the orcas can be repatriated.

¹⁰ There is no more waterwork with the four orcas at Loro Parque, as three are not safe to work with and the fourth has just given birth. Although this mitigates the trainer safety concerns to a large extent, the collective inexperience of the training staff at Loro Parque is still a major threat to staff safety and the whales’ welfare.

¹¹ 9 CFR 2.3(a)

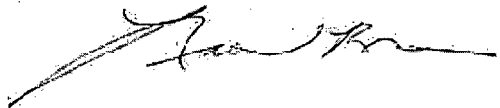
¹² 16 USC §1374(c)(2)(D)

Conclusion

Clearly the situation at Loro Parque poses a critical threat to animal welfare and public safety. While one might try to argue that the four orcas have been there for 4.5 years, making this far from an urgent issue, we must point out the obvious – during those 4.5 years, one whale has been bullied to the point of injury and destructive behavior (Tekoa – see Ms. Allee’s report). One whale is exhibiting stereotypical behavior that may be injurious (Keto, who has routinely rammed into walls and gates over the years and finally rammed into Alexis Martinez, killing him) and one whale has become almost uncontrollable (Skyla – see Ms. Allee’s report). Finally one whale has just given birth (on October 14) and rejected the calf, whose survival chances are thus poor and whose presence and intensive care by an inexperienced staff are no doubt disrupting the social dynamics of the original group. Three of the four whales are under “special protocols,” meaning that trainers are not to do waterwork with them. Most tragically of all, one trainer has been killed and one has suffered a serious injury, which continues to affect her health three years after the incident. The situation at Loro Parque has deteriorated horrifically in less than five years and NMFS and APHIS have a duty to take enforcement action.

Thank you for your prompt consideration of these concerns.

Sincerely,



Naomi A. Rose, Ph.D.
Senior Scientist
Wildlife

CC: Timothy Ragen, Ph.D., executive director, Marine Mammal Commission
The Honorable Madeleine Bordallo, Chair, House Natural Resources Committee
Subcommittee on Oceans and Wildlife