



## BOARD OF DIRECTORS

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California Coastal Commission  
45 Fremont Street #200  
San Francisco, CA 94105  
Sent via E-Mail

18 December 2015  
Our Ref: 20151218-1

**Ex-Parte Communication Disclosure: This written communication and supporting attachment has been sent to the following Commissioners and California Coastal Commission staff for distribution to all Commissioners as a matter of public record:**

Steve Kinsey, Chair  
Dayna Bochco, Vice-Chair  
Dr. Charles Lester, Executive Director  
Christopher Pederson, Chief Counsel  
Alexander Llerandi, Coastal Program Analyst

**RE: SeaWorld San Diego "Blue World Project" Application No. 6-15-0424**

Dear Commissioners and staff,

My name is Matthew Spiegl, I am an attorney and California resident and I am a board member of the Free Morgan Foundation (FMF).

The FMF is an NGO registered in the Netherlands to advocate for and ensure the rights of the wild-born female killer whale known as Morgan. Morgan was taken from the wild in the Netherlands under a rescue, rehabilitation and release permit. However rehabilitation for release was never attempted and from the very first day of her "rescue" Morgan was put on display to the paying public. Currently, Morgan is held in Loro Parque with five other orcas on a breeding loan from SeaWorld and performing entertainment shows daily. Morgan's story is of interest to the California Coastal Commission and the Commission's process is of interest to FMF, because SeaWorld has claimed Morgan as its asset in its filing to the SEC.

Our Board of Directors consists of representatives from the Netherlands, Germany, New Zealand and the United States of America. The Chair of the FMF is Dr. Ingrid Visser who made a presentation to the Commission regarding the above referenced matter at the public meeting in Long Beach on 8 October 2015.

I am writing to you on behalf of the FMF because of the recent announcement that the Commission has granted SeaWorld an extension until December 31, 2015 in which to file a lawsuit against the Commission arising from the 8 October 2015 conditional approval of SeaWorld's application and to correct and supplement the record concerning the number of orca under Sea World's care and the significance of the Virgin Pledge.

#### **EXTENSION OF DEADLINE**

Many parties, including the FMF, are concerned that the granting of the extension is a sign that Commission staff is engaged in closed door negotiations with SeaWorld which could result in the breeding restriction condition being significantly modified and weakened from the version presented at the public meeting, or removed from the permit conditions all together in order to avoid litigation.

The FMF urges the Commission and its staff to avoid even the appearance of impropriety and conduct all discussions concerning this matter in an open, transparent manner to ensure public notice and opportunity to engage, respond and be heard on this matter if any changes to the language and/or terms of the condition as approved on 8 October 2015, are being considered.

The FMF is opposed to captive breeding of killer whales and believes that this is an issue which the Commission properly addressed. It is a significant issue and the Commissioners should be proud of their vote. The FMF fully expects the court to affirm the Commission's decision during the legal challenge.

#### **CORRECTION TO THE RECORD**

In going through the Commission's staff report prepared by Mr. Llerandi, it appears that some material facts concerning SeaWorld's real-world actions were either omitted by SeaWorld in its application or overlooked by Commission staff during the vetting of the proposal. The information being submitted by the FMF is for the purpose of correcting the record and ensuring that all the facts are before the Commission and, subsequently, the court.

Although Morgan is held at Loro Parque, Tenerife, Canary Islands (Spain), her story involves a direct connection to SeaWorld San Diego and the issue of captive breeding which the Commission's staff report failed to disclose. Presently there are six (6) killer whales held at Loro Parque and they are all owned by SeaWorld (including Morgan, according to SeaWorld).

One of the six killer whales held at Loro Parque is Kohana. Kohana was born at SeaWorld San Diego in May 2002. She was transferred to SeaWorld Orlando in 2004 and then sent to Loro Parque in February 2006. This is the very type of killer whale trafficking that the condition the Commission imposed on the SeaWorld project would put an end to.

Briefly, Loro Parque is a marine theme park facility in the Canary Islands similar to the SeaWorld parks in the United States. SeaWorld originally sent four (4) killer whales to Loro Parque in 2006. Since then there have been two captive killer whale births to SeaWorld's killer whales at Loro Parque. One of the two calves (Victoria) however, died before reaching her first birthday. Morgan also resides at Loro Parque but Morgan is a wild-born killer whale who was taken from the Wadden Sea in the Netherlands pursuant to a Dutch rescue, rehabilitation and release permit. Morgan was rescued, rehabilitated, trained to live in captivity, and never released.

Morgan was sent to Loro Parque by the Dolfinarium Harderwijk (Netherlands) as a direct result of manipulation by SeaWorld. Once at Loro Parque, SeaWorld publicly laid claim to the rescued, wild-born Morgan as their property. This, despite the fact that, as the matter was presented to the two governments involved (Spain and the Kingdom of the Netherlands), it appeared on paper to be a simple matter of the Dutch facility sending Morgan to the Spanish facility for research. SeaWorld does not like to discuss Morgan because her case contradicts SeaWorld's PR message that it does not take killer whales from the wild – a message erroneously adopted in the Commission's staff report.

I will touch upon a few specific points below, but I encourage each Commissioner and those members of the staff working on this matter, to read the accompanying FMF white paper about SeaWorld's whale laundering activities. Through the FMF white paper, you can begin to fully appreciate the illicit nature and consequences of captive breeding and commercial exploitation of killer whales by SeaWorld and others.

### **Staff Report Issues and Discrepancies**

#### **Existing Orcas and Facility (6 Killer Whales Missing) –**

*“According to the NIMM maintained by NMFS, there are four facilities in the United States that hold captive orcas, three of them being SeaWorld facilities: SeaWorld San Diego has eleven, SeaWorld San Antonio has seven, and SeaWorld Orlando has six, for a total of 24 orcas. The fourth facility – Miami Seaquarium – has only one orca. Of the eleven orcas at SeaWorld San Diego, eight were born in captivity and three originated in the wild. There are currently 56 orcas in captivity worldwide, with 24 of them (43%) under SeaWorld's care.” (CCC staff report at page 16)*

At the time the Commission staff report was written, there were actually 29 killer whales “officially” reported by SeaWorld to the US National Marine Fisheries Service and legally under SeaWorld's care, with a 30<sup>th</sup> orca (Morgan) omitted from the NIMM by SeaWorld (also referred to as a Marine Mammal Inventory Report or MMIR), but claimed as SeaWorld's property in filings with the US Securities and Exchange Commission (SEC).

For a complete discussion of this discrepancy I refer you to pages 40 through 45 of the FMF white paper which includes a specific reference to California Coastal Commission staff report on this very point appearing on page 44 along with a discussion of what Michael Scarpuzzi (Vice President of Zoological Operations for SeaWorld San Diego) knew and when he knew it regarding the total number of SeaWorld killer whales including those held at Loro Parque in Tenerife, Spain.

Mr. Scarpuzzi made a Freedom of Information Act (FOIA) request on behalf of SeaWorld San Diego to the US National Marine Fisheries Service for the NIMM for killer whales on 5 May 2015 which includes reference to the SeaWorld killer whales held at Loro Parque. These additional SeaWorld killer whales were omitted from the “head count” provided in the Commission’s staff report. The fact that these killer whales were in Spain is irrelevant; they remain in the care and control of SeaWorld. This last point is supported by testimony given by Mr. Scarpuzzi in the case of *Secretary of Labor vs. Sea World of Florida, LLC*. (2011) OSHRC Docket No. 10-1705 (the case highlighted in the documentary *Blackfish*). Under oath, Mr. Scarpuzzi testified that while serving as Vice-President of Zoological Operations for SeaWorld San Diego he was also responsible for overseeing the care of SeaWorld’s killer whales that are held at Loro Parque.

The reason SeaWorld omits discussion of the Loro Parque killer whales in its application is that it undermines SeaWorld’s own argument for the need to continue captive breeding in San Diego. In fact SeaWorld told the SEC that Loro Parque “provides for additional housing capacity for our killer whales.” (Amendment No. 3 to SeaWorld’s Form S-1 Registration Statement (8 April 2013) at page 73) If SeaWorld keeps breeding killer whales in its parks in the United States, it will continue to make the same argument for exporting their excess killer whales to foreign countries that are void of comparable animal welfare protections.

#### **Authorized Orca Facility (Virgin Pledge) -**

*“By acceptance of coastal development permit No. 6-15-0424, the applicant agrees to implement the project as originally proposed and as amended by the SeaWorld Addendum to the Blue World Project Description dated September 21, 2015 (Exhibit 9), and consistent with all special conditions, including that the Project will be managed consistent with the Virgin Pledge against collection of killer whales from the wild. Based on the Virgin Pledge, to which SeaWorld is a signatory, the Project will not be home to any killer whales taken from the wild after February 12, 2014 and no genetic material from any killer whale taken from the wild after February 12, 2014 will be utilized, with the exception of rescued killer whales approved by one or more government agencies for rehabilitation or deemed by one or more government agencies as unfit for release into the wild. The Project killer whale population will not significantly increase except as may occur incrementally through sustainable population growth consistent with reproductive guidelines of one or more nationally recognized marine mammal accreditation organizations. The Project may be home to beached or rescued whales at the request of one or more governmental agencies.” (CCC staff report at page 7)*

The effective date of the Virgin Pledge (14 February 2014) may appear to the Commissioners and staff to be of no consequence, but to Morgan's fate, it is. Despite SeaWorld repeatedly stating that it does not take killer whales from the wild, the accompanying FMF white paper exposes SeaWorld doing just that with respect to Morgan.

At the hearing SeaWorld agreed to 'roll back' the date from which they would not accept 'wild-caught' killer whales into their collection, to 14 February 2012, thereby excluding the Russian wild-caught killer whales, which were specifically addressed at that meeting. As such, this gave the appearance that SeaWorld was making a big concession, but by accepting this date they did not concede to not breed Morgan or keeping her, because she was captured on 23 June 2010. Although the condition also mentions that the project may be home to beached or rescued whales at the request of one or more governmental agencies, please note that the focus of the FMF white paper is to expose exactly how SeaWorld exploits those types of provisions in order to manipulate the process and gain approval of government agencies who lack resources to monitor rescued cetaceans to ensure that those legitimately eligible for release after rehabilitation are in fact released.

This may seem like a small issue, but of note is the fact that Morgan (excluding the Russian killer whales) is the only known wild-born female killer whale captured and placed in captivity in the last 18 years. SeaWorld does not have its hands on the Russian killer whales but it does have its hands on Morgan and by limiting the roll back of the Virgin Pledge to 2012, SeaWorld conceded nothing regarding the wild-born bloodline it intends to exploit by breeding Morgan with SeaWorld's captive born male killer whales that are held off-shore at Loro Parque. FMF asks that the Commission take into account this important date, and if the opportunity presents itself, roll back the date to 23 June 2010 or before.

I hope the information provided in this letter and the accompanying FMF white paper assist the Commissioners and staff in defending any legal challenge raised by SeaWorld. Should you require additional information or documents, FMF will be pleased to so provide.

Even one more generation of captive-born killer whales is one generation too many.

Sincerely,

Matthew Spiegl, Esq.  
Free Morgan Foundation

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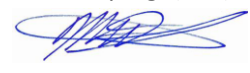
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