

Date: June 30, 2006



TO: Board Members - Parks and Recreation
FROM: General Manager - Parks and Recreation
SUBJECT: Parks Control Bylaw Review (Section 9)

RECOMMENDATION

THAT the Board include an evaluation of the Parks Control Bylaw (Section 9) as part of the Technical Review and Public Consultation Process for the Aquarium Revitalization and Expansion Proposal.

BACKGROUND

Prior to 1996 the Park Board Park Control by-law did not limit the importation of cetaceans by the Aquarium. In 1996 the Aquarium and the Park Board reached an understanding on conditions surrounding the importation of cetaceans. This relationship and direction grew out of an extensive Park Board public consultation process regarding a request to expand the Aquarium. The focus of public input was greenspace reduction in Stanley Park and the keeping of cetaceans in captivity. The outcome of this process was the creation of three related formal documents;

- A Memorandum of Understanding between the Park Board and the Aquarium, acknowledging each agency's mandate and responsibilities as well as an expression of the conditions under which cetaceans could be acquired by the Aquarium.
- An amendment to the Parks Control Bylaw (Section 9) to formally cast the conditions, defined in the Memorandum of Understanding, under which additional cetaceans could be added to the Aquarium collection.
- A new license agreement replacing the expired 1985 agreement in 2000, outlining the respective roles of the Board and the Aquarium and incorporating the language of the amended Parks Control Bylaw (Section 9).

The final understanding relating to cetacean importation read as follows in both the Bylaw Amendment and the License Agreement.

9 (e) No person shall bring into any park or keep or otherwise maintain in any park any aquatic mammal of the Cetacean order including, but not limited to, baleen whales, narwhals, dolphins, porpoises, killer whales and beluga whales, which has been captured or otherwise taken from its natural wild habitat, except that this prohibition shall not apply to:

- (i) captive cetaceans caught from the wild prior to September 16, 1996 and cetaceans born into captivity at any time,
- (ii) cetaceans which are already being kept or maintained in a park as of September 16, 1996,
- (iii) a member of an endangered cetacean species, provided that approval for bringing it into a park has first been obtained from the Park Board, and
- (iv) an animal that has been captured or otherwise taken from its natural wild habitat for the purpose of rehabilitating it from injury or preventing its death due to stranding provided that its capture or taking and subsequent release to natural habitat is done under the jurisdiction and with the approval of the federal agency responsible and provided that the Park Board has been informed in as timely a manner as possible.

DISCUSSION

Since the Bylaw amendment in 1996 and subsequent License Agreement renewal, activity relating to the importation of cetaceans is outlined in the following table.

Summary of cetaceans imported into the Vancouver Aquarium since 1996						
Since 1996 the Vancouver Aquarium has imported four Pacific white-sided dolphins (<i>Lagenorhynchus obliquidens</i>)						
Name (Cetacean)	Sex	Arrival Date	Previous Home	Origin	Info	Parks Control By-law exemption
Spinnaker	M	July 31, 2001	Kaiyukan Aquarium	Japan, captured 1991		Exception 9 (i)
Laverne	F	August 23, 2005	Sea World (San Antonio)	Pacific Ocean, captured U.S. 1982		Exception 9 (i)
Helen	F	October 16, 2005	Enoshima Aquarium	Japan Stranded/rehabilitated 1996	female, 17 yrs old, "captured before October 1996", flipper injured in the fishing net and amputated	Exception 9 (i)
Hana	F	October 16, 2005	Enoshima Aquarium	Japan Stranded/rehabilitated 2002	female, 11 years old, captured in 2003, in fishing net; sickly and undernourished	Exception 9 (iv)
No other cetaceans of any species have been brought into the Aquarium since 1996.						

Staff of both organizations have worked to ensure that these new acquisitions have respected the conditions of the Bylaw.

However, in 2003 and 2006, groups disapproving the capture of cetaceans for display purposes have presented briefs to the Board outlining concerns with the effectiveness of the Bylaw.

Arguments raised in the briefs are in summary;

- Concerns about the application and enforceability of the Bylaw's language.
- Concerns about the Board's obligation to enforce the Bylaw.
- Concerns as to where the burden of proof of cetacean acceptability lies.
- Concerns about the legal impacts of the License Agreement upon the Bylaw.

In October 2005, the Aquarium advised the Board that they were importing two new dolphins from Japan as noted in the previous table. While one was accepted under the pre 1996 exception, the second was brought in under the stranding exception of the Bylaw. This Section 9 (e) iv has been interpreted differently by Park Board and Aquarium staff.

CONCLUSION

The Board periodically reviews and updates its bylaws. The current Bylaw has been in place for a decade, and the Board has received briefs that challenge the effectiveness of some of the clauses. A public discussion on Section 9 of the Bylaw would be beneficial to assess its future relevance and to clarify wording in the Section 9 (e) iv which has produced differing interpretations of its intent. This is timely in that the Board and Aquarium are undertaking a major public consultation process regarding the potential revitalization and expansion of the Aquarium. This review would be a logical part of this process.

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