Laying the Groundwork for a Cetacean Sanctuary Movement

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Abstract

In recent years evidence has shown that cetaceans cannot thrive in concrete tanks and, as such, there are increasing public and legal efforts to close captive cetacean entertainment facilities around the world. While there are independent efforts occurring in various locations, in order to amplify these efforts into a global movement three issues should be addressed: 1) legislation should promote the transfer of whales and dolphins from closed commercial facilities to sanctuaries, 2) the legal status of whales and dolphins must change to allow for their recognition as more than simple property, and 3) there should be oversight of transfers to authentic sanctuaries.

More than 3,500 cetaceans (dolphins, whales and porpoises) are housed in ~350 marine parks, zoos, and military facilities around the world (Ceta-Base, 2026). Approximately 81% of those are confined to land-based concrete pools (Ceta-Base, 2026).

Welfare science shows that cetaceans experience severe mental, physical, and social distress when living in concrete tanks at entertainment venues like theme parks, aquariums, and zoos (Lott & Williamson, 2017; Rose et al., 2017; Hosey, Melfi & Ward, 2020; Marino, 2020; Marino et al., 2020, 2025; Marino & White, 2022; McGillian, 2023). Specifically, cetaceans exhibit abnormal repetitive behaviors (called stereotypies) and self-harm, disrupted social relations, opportunistic infections (e.g., pneumonia, encephalitis, gastritis), hyper-aggression, and short lives (Marino et al., 2020; Jacobs et al., 2021, Marino et al., 2025).

Moreover, in many parts of the world the public has become more concerned about the welfare of captive cetaceans and less favorable towards captivity itself (Giovos et al., 2019; Naylor & Parsons, 2018; Wassermann, Hind-Ozan & Seaman,2018). Therefore, the captive cetacean entertainment industry is steadily losing ground. Countries including Canada, France, Mexico, and Belgium have enacted laws and regulations bringing an end to captive cetacean entertainment and breeding. In this paper, I discuss some of the changes that need to occur so that the work of governments, non-governmental organizations (NGOs), and the public can amplify their separate efforts and bring them together in a cohesive global movement to end the exploitation of cetaceans for entertainment.

The transfer of 34 beluga whales and dolphins in 2026 from Marineland Canada to theme parks and aquariums in the United States and Spain is an example of what happens when legislation is passed requiring a park to cease its activities but makes no provision for what should happen to the animals afterwards. In this case, the receiving facilities announced that the transfer would be in the best interest of the whales. What in fact happened is that several of the whales died in the first month after being transferred. Certainly, the whales

from Marineland Canada were not in good health. They were clearly moved while unhealthy. And moving worsened their condition.

But why didn't they improve when they reached these new, and supposedly better, facilities?

The answer is straightforward: When captive cetaceans are transferred from one concrete tank to another, there is no meaningful improvement in their welfare because living in a concrete tank is itself the problem. First, the tank environment is impoverished and highly constraining. And second, the managerial policies of entertainment facilities do not, by definition, prioritize the welfare of the animals over revenue.

The parks argue that most, if not all, of the cetaceans held in captivity cannot be transported back "to the wild" because they lack survival skills, and that therefore, transfer to another tank in another facility is the only option. But that is not the case. The right option – the only option – for transferring the whales in accordance with legislation calling for an end to the exploitation of these animals is to retire them to ocean-based sanctuaries, where the welfare of the whales is the one and only priority.

True sanctuaries are fundamentally different from commercial facilities in that their priority is the well-being of each sanctuary resident over human interests. Commercial facilities cannot make this claim because they would go out of business if they followed this practice. Beyond the basic care given in marine parks – food, protection, and veterinary services – authentic sanctuaries have the potential to provide for superior welfare by allowing the animals to live in a setting more consistent with their evolutionary history and characteristics. Coastal sanctuaries are located in ocean waters and do not impose performances and visitor interaction on the whales. Rather, their autonomy is promoted.

While existing laws like the bill passed in Canada in 2019 represent an important step forward, they inevitably stop short of providing an actionable retirement solution for the animals. One key reason for this is that the parks remain the legal "owners" of the whales and are entitled to treat these highly intelligent, sentient beings as little more than pieces of property.

Finally, there is the issue of how the word “sanctuary” is defined. This allows entertainment facilities to label themselves as sanctuaries while not offering a true sanctuary-based life for the animals. And the public does not have the information that people need to distinguish between these pseudo-sanctuaries and authentic ones.

So, there are three issues that need to be addressed for a global movement to progress towards bringing an end to captive cetacean entertainment: 1) governments should take more responsibility for what happens to captive cetaceans after legislation is enacted; 2) the legal status of whales and dolphins must change from property to one that recognizes them as autonomous beings in their own right; and 3) when commercial facilities close down, the animals must be cared for in situ until they can be transferred to authenticated sanctuaries.

The benefits and drawbacks of legislation

Laws and legal policies are increasingly being enacted to phase out the keeping of cetaceans in captivity for entertainment purposes. The U.S.-based SWIMS Act (2024), a federal bill to phase out captive cetacean entertainment in the United States, was reintroduced in 2026. Canadian Bill S-203, passed in 2019, banned the breeding and use of captive cetaceans for entertainment. In 2021, the French government decreed a trade and breeding ban that mandates an end to the use of whales and dolphins for entertainment by the end of 2026 (Law No 2021-1539). In July 2026, the Flemish Government approved in principle a draft amendment to the Flemish Animal Welfare Code introducing a definitive ban on keeping cetaceans in captivity after 31 December 2036 (Amendment to the Flemish Animal Welfare Code: ban on keeping cetaceans in captivity), making it the fourth country in Europe to ban dolphinariums. In 2025, Mexico’s Senate approved a nationwide ban on the use of marine mammals in swim programs (World Animal Protection, 2025). Other countries are also considering similar legislation.

However, while the new laws and rules take an important step towards bringing an end to the exploitation of cetaceans, they do not provide for life after marine parks and zoos are shut down. In many cases, they “grandfather in” the existing animals in terms of their

staying in tanks. Therefore, when the facilities close, the animals end up languishing or being transferred into concrete tanks at other facilities. In July 2026, for example, the Canadian federal government authorized the export of 30 beluga whales and four bottlenose dolphins from Marineland Canada to theme parks and aquariums in the United States and Spain. This decision runs counter to the spirit and intention of the *Ending the Captivity of Whales and Dolphins Act*, which became law in 2019. Though the cetaceans' best interests were foundational to the law, after five years and several threats by Marineland Canada to kill the remaining whales (Brown, 2026), the government conceded to the captivity industry and sent the belugas to live in concrete tanks in foreign countries. They did this even though there is an authentic ocean-based sanctuary being created in Nova Scotia that could have taken at least several of the whales from Marineland.

What was needed, instead, was open discussion between the government, Marineland, and the sanctuary team to find a way to expedite the completion of the sanctuary so that some of the beluga whales could retire there. But that path was not one Marineland or the Canadian government wanted to pursue. Therefore, the hard-fought bill ending captive cetacean entertainment in Canada did not result in significant change for the whales. As Fenton (2026) makes clear: "…inherently cruel captivity in one country is inherently cruel captivity in another country."

Several cetacean sanctuaries are already being established, but none are yet operational. This means that sanctuaries cannot always be ready when captive cetaceans become available for retirement. In such cases, the parks and zoos have a duty of care to continue to look after these cetaceans who have furnished them millions of dollars in profit. And governments (federal, provincial, and municipal) that pass legislation banning captive cetacean entertainment must be prepared to step in to ensure the best interests of the animals.

Governments need to go further than simply closing cetacean entertainment parks and aquariums. This may involve requiring the "owners" of the whales to continue caring for the animals until a sanctuary is ready; it may mean helping to accelerate a sanctuary's

timeline; or it may involve financial aid to nascent sanctuaries and to the closed commercial facilities while the animals await relocation to sanctuaries.

Governments could also intervene when a facility has closed and take possession of the cetaceans with the goal of sending as many as possible to sanctuary. In Canada, various provincial governments and other jurisdictions step in to seize other kinds of animals in "distress" and relocate them to sanctuaries or rescues until the offence that the "owner" of the animals has been charged with is adjudicated upon permanently. This kind of action is reasonable for many land-based rescues – dogs, cats, birds, mink, etc. – but often governmental agencies do not act fully upon these goals because they do not know how to deal with large aquatic wild animals such as cetaceans. (In some other countries, an "administrative seizure" can be enacted that does not require the animals to be moved but does allow for third parties to care for them.)

Kapera & Kapera (2026) suggest that, in addition to legislation, one way to promote the closing of entertainment parks is to provide financial incentives to facilities that replace live animals with virtual reality or animatronics. Perhaps similar financial encouragement can be applied to closing parks to send their animals to sanctuaries (or create their own sanctuaries) instead of to other commercial facilities. The question of who carries that financial burden is an important one, but it is reasonable to argue that legislatures should do so.

Weed (2018) has proposed that a "safety net" provision be built into an international treaty enforced by an agency such as the United Nations through, perhaps, a law such as the United Nations Convention on the Law of the Sea (UNCLOS) or something similar. Such a move would not only establish a more uniform global ban on captive cetacean entertainment and breeding but also could allow for provisions to promote sanctuary retirement for whales and dolphins. This kind of international effort would be a heavy lift but might be developed as an aspirational goal that can exert some kind of pressure to retire captive dolphins and whales to sanctuary rather than to another concrete tank. New laws should include provisions in keeping with the spirit of these rulings so that captive

cetaceans do not go from one inhumane situation to another but, rather, have options that promote sanctuaries, when available.

Change legal status of whales

Nonhuman beings are all still considered legally to be things or objects. This private property status is the basis for human exploitation of any wild animals. Most legal codes around the world categorize animals as simple objects (Fasel & Butler, 2023). That is, they are viewed as no different from an inanimate object like a car or a chair. Some view animals as more than merely simple property, having taken steps towards differentiating animals from objects (Fasel & Butler, 2023). This affords them some protection not provided for objects but does not go as far as to see animals as some*one* and not some*thing*. Animals are still owned and are not eligible for any rights. Legally speaking, the fact that nonhuman animals have no legal rights means that for attorneys to help them, they have to demonstrate how a human has been harmed by the nonhuman animal's treatment or situation.

There have been some notable exceptions to this general situation. In Argentina in 2016, a chimpanzee named Cecilia was granted legal personhood and moved from a local zoo to a sanctuary. Isolated examples like this exist (Choplin, 2017). In 2026, again in Argentina, two goldfish were legally recognized as sentient beings with rights (Thomas, 2026).

Despite these rare successes, it has been difficult to convince courts of the legal standing of animals in such matters. It remains that under almost all circumstances around the world, animals are viewed as property with no legal rights. As such, cetaceans are the property of entertainment parks, which makes it exceedingly difficult, if not impossible, to gain access to them or wrest them from the parks without the consent of their "owners."

Recently, the legal status of whales as property became the central roadblock in efforts to bring two captive orcas at Marineland Antibes, mother and son Wikie and Keijo, to a sanctuary in Nova Scotia. In 2021 France passed Act No. 2021-1539, which banned the holding and captive breeding of dolphins and whales, followed by a call for "Expressions of

Interest" for options for a new home for the remaining orcas. The Whale Sanctuary Project (WSP) submitted an extensive document for transferring the whales to the sanctuary in Nova Scotia, and in response the French government recommended the proposal as the best sanctuary solution for the orcas at Marineland Antibes. But Marineland's owners, Parques Reunidos, opposed the sanctuary solution and the French government had to yield to Marineland as the legal owners of the whales, leaving the orcas to languish in the closed park while awaiting transfer to an, as yet, unknown facility.

The boldest and most progressive effort to change the legal status of nonhuman animals is the work of the Nonhuman Rights Project (NhRP), founded by the late Steven Wise in 1995. The NhRP has been at the forefront of arguing that many animals, including great apes, elephants, and cetaceans, for whom there is copious scientific evidence for possessing such characteristics as self-awareness, autonomy, emotions, intentionality, desires, strong social relationships, fit the legal definition of personhood and are therefore eligible for basic rights appropriate to their species.

Their legal theory is employed in petitions for a writ of *habeas corpus* in states strong on the common law. Traditionally, the detained "person" in *habeas corpus* cases was a human, but not all humans were included. Enslaved people were not considered to be "legal persons" until courts began ruling on their behalf at the end of the 18th century. Likewise, Wise has argued that some nonhumans should be included in such cases because they meet all the criteria used to define legal personhood. If the NhRP were to win a case, the nonhuman client would then be eligible to possess fundamental liberty rights. Such an outcome would mean that he or she has the right not to be confined and should be allowed to be free. In reality, and for practical reasons, such cases would result in the client going to a sanctuary instead of going back to the wild. But a strong precedent would then be set for other individuals held in zoos, laboratories, circuses, and marine parks.

No judge has yet broken the barrier and decided that a nonhuman being is a legal person. While they are still litigating *habeas corpus* cases, the NhRP has expanded into a wider range of efforts for legal change. Many legal scholars have argued that legal personhood is

too threatening or extreme for judges to accept, even for our closest relatives, the great apes. They argue for other kinds of strong legal protections that do not challenge the uniqueness of human personhood but also recognize that other animals are not merely property. Professor of law Angela Fernandez has argued that a "quasi" status (e.g., "quasi-person) would be appropriate for other animals, as it does not include the full concept of personhood that seems to be intractable at this time but speaks to their "more-than-property" status (Fernandez, 2019). 'Quasi' is a term attorneys use when referring to legal phenomena that are between two rigid categories. Fernandez argues that this label affords much more flexibility than attempting to force the legal status of animals into one category or another.

Another legal scholar, Maneesha Deckha, favors the label of "beingness" to recognize the status of nonhuman beings as legal subjects without comparing them to humans with the personhood label (Deckha, 2021). Beingness, Deckha argues, would provide other animals with a non-propertied legal status that would prevent their instrumental use and exploitation. She views this term as transforming animals into their own legal status with their own kind of legal subjectivity.

Many other legal theorists have offered ways that other animals could occupy a legal status intermediate between property and personhood, but the question for all these arguments is whether these intermediate statuses can truly lift animals from their property status. None have yet done so.

Overseeing transfer to authentic sanctuaries

Once captive dolphins and whales are "retired" from entertainment parks, it becomes imperative that they not be transferred into the same conditions they endured previously. This means having enough sanctuaries available to rehome them. It also requires that there be a way to authenticate facilities labeling themselves as sanctuaries.

Sanctuaries represent a unique culture of care that differs from zoos and other entertainment facilities in several ways. Sanctuaries prioritize the well-being of the

residents over any human concerns. They provide as much of a natural environment as possible to promote flourishing. In the case of cetacean sanctuaries, these include an ocean environment in the form of a large coastal bay or equivalent ocean-based area, more space, a more complex and dynamic natural environment, and the opportunity to interact with other species – fish, crabs, etc. – and other natural elements of their environment. Moreover, sanctuaries promote the expression of natural behaviors and the exercising of autonomy without the burdens of performing or interacting with visitors (Marino et al., 2025). Just as in commercial parks, sanctuaries provide food, veterinary care, and safety.

Zoos and marine parks are not sanctuaries, but they have taken up the language of sanctuary because they are aware of the positive connotations associated with the term in the public's mind. Truax and Vonk (2025) found that participants in their studies consistently rated sanctuaries more positively than zoos in terms of animal welfare. Therefore, zoos and other commercial facilities have a financial incentive to adopt terms such as "refuge", "haven", and "sanctuary" without providing any legitimacy to these claims.

This kind of "humane washing" is widespread. Winders (2017) found that 78 captive facilities (across several species) use the term "sanctuary" in their business name. Another 17 utilize the term "haven"', while 12 more opt for the term "refuge" (USDA). Of these 107 entities, only eight – or fewer than eight percent – were accredited as real sanctuaries by the Global Federation of Animal Sanctuaries (GFAS). In the world of marine parks, both Coral World Ocean Park on St. Thomas and the Dolphin Research Center (DRC) in the Florida Keys, for example, advertise themselves as sanctuaries even though they offer swim programs, performances, "activities" such as dolphin "painting" (DRC) and other trained artificial behaviors. Moreover, they engage in breeding to shore up their "collections". None of these activities promote good welfare for the animals.

Any organization or facility marketing itself as a sanctuary should be required to meet specific criteria and be subject to appropriate oversight. The first steps towards this goal have already been addressed by GFAS. The Federation already offers accreditation to many

kinds of sanctuaries and has recently adopted and published the first set of best practices for cetacean sanctuaries (GFAS). The principles laid out in this document will develop with time and with increasing experience once the first cetacean sanctuaries are established. Meanwhile, they provide standards that can be viewed as aspirational guideposts for sanctuaries receiving dolphins and whales who have been rescued or retired from tanks.

Summary

It is clear that at least three changes need to be enacted for a global movement to end captive cetacean entertainment to take hold. First, when progressive legislation is enacted, it must come with embedded provisions that facilitate the transfer of as many captive cetaceans from closed entertainment parks to authentic sanctuaries, including assistance with bringing sanctuary efforts to completion. Second, the legal status of cetaceans must change from that of simple property to one that allows qualified advocates to access them and, in appropriate cases, seize them (if only in place). Third, legal structures need to be put in place to prevent captive cetaceans from going into facilities that cannot offer high-quality care and/or are presenting themselves as sanctuaries when they are not. GFAS should provide oversight and guidance for any transfers from a closed facility to another facility calling itself a sanctuary.

These changes are necessary but not sufficient to build a global movement that will eventually bring an end to the exploitation of cetaceans for entertainment. Other restrictions and bans, such as those on captive breeding, must also be enacted.

There are several cetacean sanctuaries under development around the world. And as entertainment parks and aquariums for cetaceans begin to close, now is the time to leverage these changes towards bringing an end to the exploitation of captive cetaceans throughout as much of the world as possible.

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