

**Zoocheck
Canada Inc.**
3266 Yonge Street,
Suite 1417
Toronto, Ontario
M4N 3P6

Phone
(416) 285-1744
Fax
(416) 285-4670
Cell
(416) 450-8787

E-mail:
zoocheck@idirect.com

Web Site:
www.zoocheck.com



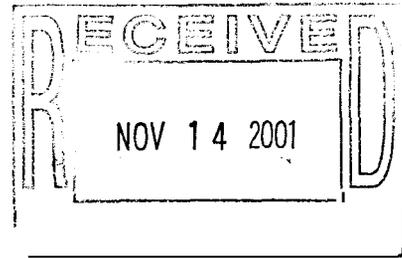
Protecting
Wildlife in
Captivity and
In the wild

Charitable Registration
#13150 2072 RP 0001

Fax to: (301) 713-0376

boxed 10/31/01
October 31, 2001

Ms. Ann Terbush
U.S. Department of Commerce
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Highway
Silver Spring, Maryland
U.S.A. 20910



**RE: Comments on National Marine Fisheries Service Proposed
Rule – Docket No. 001031304-0304-01; I.D. 080299B**

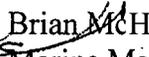
Dear Ms. Terbush:

On behalf of our thousands of supporters across Canada, please find enclosed comments on the National Marine Fisheries Service's (NMFS) Proposed Rule pertaining to the Marine Mammal Protection Act.

Zoocheck Canada appreciates the opportunity to provide comment. Due to the absence of legislation protecting marine mammals in Canada, the work of NMFS is very important to protecting marine mammals when exports of U.S. animals are being considered.

We would be pleased to discuss our comments with you at length. I look forward to continuing to work with NMFS.

Yours truly,


Brian McHattie, MSc.
Marine Mammal Program Director

c.c. Mr. Brian Wong, Canadian Department of Fisheries and Oceans
c.c. Ms. Patt Hall, Canadian Department of Fisheries and Oceans

ZOOCHECK CANADA INC.
COMMENTS ON THE NMFS PROPOSED RULE 50 CFR PART 216
[DOCKET NO. 001031304-03034-01; I.D. 080299B]
PROTECTED SPECIES SPECIAL EXCEPTION PERMITS

October 31,2001

Introduction

Zoocheck Canada was founded in 1984, and is a national Canadian charity focused on protecting wildlife in the wild and in captivity. Zoocheck works extensively on the issue of marine mammals in captivity and has great interest in ensuring the integrity of the U.S. Marine Mammal Protection Act and its regulations.

On behalf of our thousands of supporters across Canada we are pleased to have this opportunity to provide comment on the NMFS Proposed Rule. Our comments will focus on two particular aspects of the proposed rule: Section 10 - Reporting and the importance of the Marine Mammal Inventory Report, and; Section 12 - Export of Captive Marine Mammals and the Letter of Comity provisions.

Background - No Canadian Laws Governing Marine Mammals in Captivity

Although the United States have had an Animal Welfare Act since 1966 governing captivity standards, and a Marine Mammal Protection Act regulating the import and export of marine mammals for public display since 1972, Canada has no legislation governing the keeping of marine mammals in captivity.

Canada does have some history in policy-making in this issue. In the late 1970s, Canada banned the capture of killer whales in British Columbia waters. In 1993, then Minister of Fisheries and Oceans John Crosbie, passed a ministerial decree stating that Canada would no longer allow the export of Canadian beluga whales. In 1998, DFO turned down a Fisheries Act permit request from Marineland of Canada to capture Canadian beluga whales for domestic use. These policies are internal to DFO and could change at the whim of the government.

The Canadian government is aware of their shortfall in marine mammal policy and legislation. In late 1998, the federal Department of Fisheries and Oceans (DFO) engaged Dr. Jon Lien, marine mammal scientist emeritus from Memorial University in Newfoundland to conduct a review of the issue of marine mammals in captivity. Following extensive consultation with a variety of Canadian and international organisations, including Zoocheck Canada, Dr. Lien's report was submitted to DFO in April, 1999.

After two years of inaction, on July 24, 2001 DFO announced that they would coordinate development and implementation of voluntary standards for the care and maintenance of marine mammals in captivity, in cooperation with the Canadian Association of Zoos and

Section 12 - Export of Captive Marine Mammals

It has been the policy of NMFS to require comity statements from foreign governments for the export of marine mammals to ensure comparability and the safety of the animals.

As discussed above, Canada does not have any laws regulating the care and maintenance of marine mammals in captivity and is unlikely to have laws in the future given the Department of Fisheries and Oceans' July 2001 decision to rely on voluntary, industry-developed standards.

On two occasions of which Zoocheck Canada is aware, the Canadian government has refused to provide a letter of comity to facilitate the export of marine mammals from a U.S. marine park to a Canadian facility.² The Canadian government bodies assumedly made this decision with the knowledge that they would be unable to ensure that: 1) care and maintenance standards comparable to the A.P.H.I.S. standards that apply in the U.S. continue to be met; 2) marine mammals continue to be held for purposes consistent with section 104 of the MMPA, and; 3) marine mammal inventory information for exported animals is provided to NMFS.

Had the comity provision not been in place, U.S.-sourced marine mammals may have been exported to substandard facilities in Canada, without the benefit of any kind of U.S. government oversight.

Zoocheck Canada agrees with NMFS that requiring a comity letter is the most "practical and reasonable solution" to the problem, and we state emphatically that the provision must be kept in place, at least as long as Canada (and many other countries) has no legislation in place comparable to the MMPA.

Zoocheck Canada is very supportive of NMFS' work to protect marine mammals, and will continue to work closely with the U.S. government in the future to ensure that U.S.-sourced animals are protected in Canada and beyond.

² In 1996, Marineland of Canada was unable to secure a letter of comity from the Ontario Ministry of Agriculture, Food and Rural Affairs to facilitate the securement of bottlenose dolphins from Sea World. In 2000, the Vancouver Aquarium was unable to acquire a letter of comity to facilitate the acquisition of Pacific white-sided dolphins from Sea World.