

Canada's Federal Whale and Dolphin Captivity Laws

Note – Canada's federal laws to phase out cetacean captivity for entertainment purposes were implemented through both Senate public Bill S-203, the Ending the Captivity of Whales and Dolphins Act, and Government Bill C-68, changes to the Fisheries Act. Both bills came into force simultaneously on June 21, 2019. The below text is a consolidation of both bills into the final laws.

BREEDING AND PERFORMANCE

Criminal Code of Canada

445.2 (1) In this section, ***cetacean*** includes any member of the cetacean order, including a whale, dolphin or porpoise.

Offence

(2) Subject to subsections (3) and (3.1), every one commits an offence who

- (a)** owns, has the custody of or controls a cetacean that is kept in captivity;
- (b)** breeds or impregnates a cetacean; or
- (c)** possesses or seeks to obtain reproductive materials of cetaceans, including sperm or an embryo.

Exception — gestation

(2.1) If a cetacean is gestating on the day on which this subsection comes into force, paragraphs (2)(b) and (c) do not apply in respect of that cetacean for the period in which it gestates that includes the day on which this subsection comes into force.

Exception — offspring

(2.2) Paragraph (2)(a) does not apply to the offspring of a cetacean if that offspring was born immediately after a gestational period that included the day on which this subsection came into force.

Exception

(3) Paragraph (2)(a) does not apply to a person who

- (a)** owns, has the custody of or controls a cetacean that is kept in captivity at the coming into force of this section and remains continuously in captivity thereafter;
- (b)** has the custody of or controls a cetacean that is kept in captivity for the purpose of providing it with assistance or care or to rehabilitate it following an injury or another state of distress; or
- (c)** is authorized to keep a cetacean in captivity in the best interests of the cetacean's welfare pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council.

Exception

(3.1) Subsection (2) does not apply to a person who is conducting scientific research pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council.

Exception

(4) Every one commits an offence who promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive cetaceans are used, in Canada, for performance for entertainment purposes unless such performance is authorized pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council.

Punishment

(5) Every one who commits an offence under subsection (2) or (4) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$200,000.

R.S., c. F-14

CAPTURES**Fisheries Act****Taking cetaceans into captivity**

23.1 (1) Subject to subsection (2), no one shall fish for a cetacean with the intent to take it into captivity.

Exception

(2) The Minister may, subject to any conditions that he or she may specify, authorize a person to fish for a cetacean with the intent to take it into captivity if he or she is of the opinion that the circumstances so require, including when the cetacean is injured or in distress or is in need of care.

IMPORTS AND EXPORTS**Fisheries Act****Importation and exportation — cetaceans**

23.2 (1) No person shall import into Canada or export from Canada, or attempt to import or export, a living cetacean or sperm, an egg or an embryo of a cetacean, except in accordance with a permit issued under subsection (2).

Issuance of permit

(2) The Minister may issue a permit authorizing the importation or exportation of a living cetacean or sperm, an egg or an embryo of a cetacean and impose any conditions that the Minister considers appropriate in the permit, if the importation or exportation is for the purpose of

(a) conducting scientific research; or

(b) keeping the cetacean in captivity if it is in the best interests of the cetacean's welfare to do so.

Amendment, suspension or cancellation

(3) The Minister may amend, suspend or cancel a permit issued under subsection (2).

ABORIGINAL AND TREATY RIGHTS

Ending the Captivity of Whales and Dolphins Act

Aboriginal and treaty rights

6 For greater certainty, the amendments made by this Act to the *Criminal Code*, the *Fisheries Act* and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* shall not be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of these rights in section 35 of the *Constitution Act, 1982*.

TECHNICAL AND LEGAL CLARIFICATIONS

Fisheries Act

23.3 (1) Subsection 445.2(2) of the *Criminal Code* does not apply to a person who conducts scientific research in accordance with a licence issued by the Minister under subsection (2).

(2) The Minister may issue a licence authorizing any person to conduct scientific research with respect to cetaceans and impose any conditions that the Minister considers appropriate in the licence.

23.4 (1) Paragraph 445.2(2)(a) of the *Criminal Code* does not apply to a person who keeps a cetacean in captivity in the best interests of the cetacean's welfare in accordance with a licence issued by the Minister under subsection (2).

(2) The Minister may issue a licence authorizing any person to keep a cetacean in captivity in the best interests of the cetacean's welfare and impose any conditions that the Minister considers appropriate in the licence.

23.5 Subsection 445.2(2) of the *Criminal Code* does not apply to the employees of any federal entity set out in Schedules I to V of the *Financial Administration Act* who are performing their duties or functions in relation to scientific research with respect to cetaceans and to persons who are assisting them.

23.6 Paragraph 445.2(2)(a) of the *Criminal Code* does not apply to the employees of any federal entity set out in Schedules I to V of the *Financial Administration Act* who are performing their duties or functions in relation to the keeping of a cetacean in captivity in the best interests of the cetacean's welfare and to persons who are assisting them.