

August 13, 2021

Honourable Bernadette Jordan
Minister of Fisheries, Oceans, and the Canadian Coast Guard
200 Kent Street
Ottawa, Ontario
K1A 0E6

Via email

Dear Minister Jordan:

RE: Death of beluga whale exported from Marineland, Niagara Falls, Ontario

I write on behalf of Animal Justice – Canada’s leading national animal law organization – with respect to Canada’s export of live cetaceans under section 23.2 of the *Fisheries Act*. In approximately May of 2021, you approved the export of five belugas from Marineland in Ontario to Mystic Aquarium in Connecticut. The five whales were transferred on May 14, 2021. Less than three months later, on August 6, 2021, Mystic Aquarium announced that one of the whales – a six year old male named Havok – died. This highlights a number of serious problems related to Canada’s approach to decisions involving captive cetaceans – problems that require your urgent attention.

Canada chose not to make any information about the proposed export of these five whales publicly available, with officials refusing to even confirm whether Marineland had applied for the necessary export permits. Nonetheless, Animal Justice and a coalition of animal protection organizations submitted detailed comments regarding the proposed export on several occasions in an effort to inform your Ministry’s consideration of the export permit application if and when it was submitted.¹ These comments were informed in large part by the robust public consultation process undertaken by the U.S. National Marine Fisheries Service (“NMFS”) regarding Mystic Aquarium’s import permit application for the whales.

¹ See, e.g. correspondence from Kaitlyn Mitchell, Animal Justice staff lawyer, dated October 7, 2019, November 21, 2019, February 12, 2020, and January 13, 2021.

Animal Justice and a coalition of animal protection organizations also submitted detailed comments on November 18, 2020 regarding your Ministry's "Draft Policies on *Fisheries Act* Authorizations related to Cetaceans in Captivity and Reproductive Materials of Cetaceans".² One of our key recommendations was that you establish a committee of independent scientific experts and others with expertise in the welfare of captive cetaceans, scientific research involving captive cetaceans, and husbandry and management of captive cetaceans in order to make recommendations to inform your decision-making. An evidence-based, multi-perspective body such as this would ensure export permitting decisions truly do promote the best interests of animals involved, given that the aquariums proposing a given transfer will generally have financial interests at stake.

Transporting belugas and other cetaceans poses significant risks to their physical and psychological health. Transporting whales with significant health problems is generally not advisable. When you approved the export, DFO officials indicated that those involved in the transfer confirmed that the five whales were "in good health". Yet Mystic Aquarium representatives have stated that Havok died following a lengthy battle with preexisting gastric ulcers.³ These representatives indicated that Havok's condition was stable in the days leading up to the transfer, which suggests that those involved in the transfer were aware of and monitoring his condition at the time. Havok's alleged stability while at Marineland, where he was born and lived among a group of familiar belugas, would not mitigate the risks associated with his transport given that stress is known to aggravate ulcers in any mammal, including whales and humans. Clearly this particular whale was not in fact in "good health" when he was transported to the United States.

We ask that you investigate how Havok came to be represented as healthy and fit for travel in Marineland's export permit application when he apparently was not. The results of this investigation should be made publicly available and Marineland should be held accountable for any wrongdoing. We also wish to reiterate our recommendation, as set out in our above-noted November 18, 2020 comments, that you to ensure that all export permit applications are reviewed by an independent panel of experts to ensure that transfers are truly in the best interests of the animals involved and that their health and well-being is protected. As set out in further detail in our November 18, 2020 comments, part of this review and assessment must include careful consideration of the stress of transport and other implications of the proposed transfer for the welfare of the cetaceans involved.

Unfortunately, this is not the only flaw in Canada's export permit approval process that this particular transfer has exposed. Officials in your Ministry indicated that they had "confirmed that the whales will not be used for breeding", yet it does not appear that any letter of comity or other legally binding mechanism was put in place to ensure breeding will not occur for the duration of the whales' lives. Another key recommendation in our

² These comments are enclosed for ease of reference.

³ See, e.g. <https://www.cbc.ca/news/canada/hamilton/whale-dies-1.6137826>.

above-noted November 18, 2020 comments was that Canada enter into comity agreements with any importing countries to ensure enforcement of Canada's prohibitions against breeding captive cetaceans and using them in performances for entertainment. Since the day these whales arrived in the United States, Mystic Aquarium representatives have been clear that they still intend to seek approval to breed the animals.⁴ Thankfully, the NMFS included strong prohibitions against breeding in Mystic Aquarium's import permit for the five belugas, but this clear bait-and-switch on the part of the Aquarium underscores the need for Canada to do more to ensure that cetaceans subject to future transfers continue to benefit from Canada's important legal protections for the duration of their lives.

Finally, the fact that Havok was suffering from gastrointestinal problem further suggests that there are serious animal welfare problems at Marineland, where the situation is so dire that Mystic Aquarium claims to have "rescued" the belugas transferred in May. As you are aware, three of the belugas who were originally slotted to be transferred to Mystic Aquarium – Frankie, Mira, and Qila – were deemed too ill to be transferred, so Havok, Sahara, and Jetta were sent in their place. We now know that Havok too was quite ill. The extent, nature, and causes of illness in Marineland's beluga population requires urgent investigation. Indeed, there have been widespread reports of recent whale deaths at the facility, though the number of animals who have died and their causes of death remain unknown. Had Havok died at Marineland it would have almost certainly been kept secret.

On May 10, 2021, Ontario's animal welfare services found that all marine mammals at Marineland were in distress due to poor water quality, and ordered Marineland to repair the implicated water systems.⁵ Heartbreaking footage of Kiska⁶ – Marineland's sole orca, who has lived in her small tank alone since 2011 – has caused renewed public outcry over her treatment and a flood of calls from the public for authorities to investigate her treatment. Many of these problems have been reported to Ontario's animal welfare services agency but it is clear that more must be done.

We urge you to work with provincial officials to improve oversight and transparency regarding conditions at Marineland. We also urge you to improve your Ministry's approach to authorizing the export of captive cetaceans to address the deficiencies highlighted by this transfer. Transparent, science-based decision making is necessary to protect the welfare of the 50+ cetaceans still held at Marineland, and to ensure the laudable goals of Bill S-203 are realized.

⁴ See, e.g. <https://www.bostonglobe.com/2021/05/15/metro/different-kind-journey-these-migratory-whales-including-planes-cranes-tractor-trailers/>; <https://www.middletonpress.com/shoreline/article/Mystic-Aquarium-s-beluga-whales-draw-support-16295416.php>.

⁵ See, e.g. <https://www.cbc.ca/news/canada/hamilton/marineland-1.6109096>.

⁶ See, e.g. <https://animaljustice.ca/blog/animal-justice-files-cruelty-complaint-over-lonely-listless-marineland-orca>.

We would welcome the opportunity to meet with you or your staff to further discuss these issues and thank you in advance for your attention to this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Kaitlyn Mitchell". The signature is written in a cursive style with a large initial 'K'.

Kaitlyn Mitchell, Staff Lawyer

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CC: Mark Waddell, Director General, Indigenous and Sectoral Policy

*Encl.