

Aquarium fight intensifies

By charlie smith – Georgia Straight

Publish Date: 7-Sep-2006



No Whales in Captivity says that the park board won't enforce its dolphin bylaw, but the board's vice chair disagrees.

An animal-welfare group says it will take legal action this fall to try to prove that the Vancouver aquarium violated a park-board bylaw. A citizens' group called No Whales in Captivity issued the threat a week before key park-board votes that could affect the aquarium's future. The group alleges that the aquarium illegally imported two Pacific white-sided dolphins in 2005—a claim denied by the park board's liaison to the aquarium, NPA vice chair Comm. Ian Robertson.

On Monday (September 11), commissioners will deal with a staff recommendation to conduct a public-consultation process on the aquarium's proposal to increase its presence in Stanley Park by 50 percent. The aquarium and the park board would jointly manage the consultation, which would be conducted by Kirk & Co. Consulting Ltd.

In 1996, the park board banned the importation of dolphins and whales into Stanley Park unless they were born in captivity or they were captured from the wild prior to September 16, 1996. "According to the lawyers we have talked to, there are many options open to a group such as ours or to any citizen," coalition spokesperson Annelise Sorg told the Georgia Straight. "There is a myriad of things that we're looking into."

No Whales in Captivity made a presentation to the park board's planning committee on June 6 this year alleging that the aquarium broke the law by importing a dolphin named Hana (which was captured in Japan in 2003, No Whales wrote, according to an aquarium memorandum). The coalition also raised concerns in its June 6 submission about a second dolphin, named Helen, alleging that the aquarium had not proven that it was captured from the wild prior to September 16, 1996.

Aquarium officials did not make themselves available for comment prior to the Straight's deadline. Aquarium president John Nightingale maintained in the 2005 news release that these dolphins were brought into the facility for "creating a social grouping" and would enable visitors to learn about a species indigenous to B.C.'s coastal waters. The news release also stated that the two dolphins were "rescued" after being "stranded by becoming entangled in fishing nets" in Japan.

Under the 1996 bylaw, a whale or dolphin may be captured and brought into Stanley Park "for the purpose of rehabilitating it from injury or preventing its death from stranding provided that its capture or taking and subsequent release to natural habitat is done under the jurisdiction and the approval of the federal agency responsible".

The aquarium's news release claimed that the Japanese government deemed the dolphins "not releasable" and sent them to an aquarium, where they were rehabilitated. The coalition claimed in its June 6 submission that this wasn't sufficient under the park-board bylaw, even if they were "stranded".

"The presence of both dolphins in the Enoshima Aquarium for several years after completion of their respective rehabilitations was no longer for the purpose of rehabilitating from injury, but for exhibiting them to the public," the coalition alleged. "If it were necessary, the prosecution could probably establish to the satisfaction of the court that the acquisition and keeping of these dolphins in Vancouver by the [aquarium] was not for the lawful purpose of medical treatment under Section 9(e)(iv) [of the bylaw] but for the unlawful purpose of exhibition, that the initial purpose of the captures in Japan is an irrelevant matter of concern only to Japanese authorities, and that the later transfers of the dolphins to a Vancouver park do not meet the test of lawful purpose."

Later in the submission, the coalition alleged that if the aquarium is convicted, it would be in breach of its lease with the City of Vancouver. "The consequences of conviction will be, for the accused, some fines and some public ignominy," the coalition claimed, even though nobody has been accused of anything in court, let alone convicted of an offence.

Denis Howarth, a nonpractising lawyer and legislative consultant to the coalition, told the Straight that the bylaw's reference to a "federal agency" means a "Canadian federal agency". He claimed that it did not apply to the Japanese government, even though the aquarium has pointed to Japan's decision not to release the dolphins into the wild.

"Japan is not even a federation," Howarth said. "It's a unitary state."

Howarth, a former Coquitlam city councillor, also claimed that the coalition has three options: launching a judicial-review application to obtain a B.C. Supreme Court order forcing the park board to enforce its bylaw; filing a police complaint; or starting a private prosecution. He noted that the fine is relatively small under the bylaw—up to \$2,000—but the political impact could be significant as the aquarium is planning an expansion.

The NPA's Robertson told the Straight that he doesn't believe the aquarium violated the bylaw. "We had our lawyers look at it and report back that 'No, there was no breach of the conditions,'" he said.

Robertson added that he is unfazed by the coalition raising the spectre of legal action against the board. "I guess my comment is, 'We don't respond to threats,'" Robertson said. "If they feel that is a course of action they want to take, obviously they're open to do whatever they want. It's a democratic society. In terms of my personal opinions, to hear that doesn't deter me from moving ahead."

He also said that he doesn't "lend a lot of credibility" to the coalition, alleging that it has not answered NPA Comm. Marty Zlotnik's questions about its membership. "I tend to think when we hear from them, we're hearing from 0.5 percent of the population," Robertson claimed. "My role, I think, is to represent the broader views and the interests of the residents of Vancouver."

Howarth, however, claimed that the coalition echoes the view of a majority of Vancouver residents with its opposition to keeping whales and dolphins in captivity. "In our view, if there were a referendum or a plebiscite—'Do you want to phase out the containment of whales and dolphins?'—it would pass. That's on the basis that there was a vote on 'Do you want to get rid of the zoo?' [which the public approved in 1990]," Howarth claimed. "The aquarium is probably of that view also because they are so desperate to avoid a public vote."

On May 29, the NPA-controlled board approved Zlotnik's motion to cancel a requirement for a referendum as a precursor to any aquarium expansion. The board also approved Zlotnik's motion to cancel a requirement for a plebiscite in the 2008 election on keeping whales and dolphins in captivity. NPA park-board chair Heather Holden, an employee of the Vancouver Aquarium, absented herself from voting on these motions.

More recently, Zlotnik wrote a late-night e-mail to Sorg saying that he believes she has no interest in what the public thinks. Zlotnik also characterized her description of the aquarium as a for-profit organization as "somewhat disconcerting". The aquarium is a registered charity that generated \$24 million in revenue in 2004, according to financial documents filed with the Canada Revenue Agency.

"You have had a pretty good run with successive Park Boards and now is the time to be constructive not destructive," Zlotnik wrote. Sorg sent an e-mail back noting that Zlotnik must have been "tired and emotional" as evidenced by the "curious spelling errors and syntax" in the message.

Meanwhile, the aquarium has proposed increasing its "footprint" by 0.6 hectares, or 50 percent, which would require the removal of 15 conifers and 17 deciduous trees. Only nine of the 32 trees have a diameter greater than 12 centimetres and none have a diameter greater than 60 centimetres, according to a park-board report. The aquarium has also proposed a new restaurant with both take-out and seated service, and new, larger pools for dolphins, sea lions, sea otters, and beluga whales.

The aquarium hopes to include three free public-viewing areas, including two with underwater observation. The aquarium's salmon hatchery would be moved into a new building, and there would be modifications to the salmon stream so that it would become fish-bearing.

Sorg claimed that the consultation process is an attempt by the aquarium and its political supporters to "manufacture consent". Sorg pointed out that Kirk & Co. founder Judy Kirk, who has been contracted by the aquarium, has ties to the B.C. Liberals (she was the B.C. Liberals' caucus executive director in the mid-1990s) and to a previous NPA government (she advised Mayor Philip Owen on the City of Vancouver's four-pillars drug strategy).

Kirk declined the Straight's invitation to respond to Sorg's allegation.