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Chair

Mr. Ken McDonald

Standing Committee on Fisheries and Oceans

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• (1535)

[English]

The Chair (Mr. Ken McDonald (Avalon, Lib.)): Good afternoon, everyone.

Pursuant to the order of reference of Friday, February 1, 2019, Bill S-203, an act to amend the Criminal Code and other acts (ending the captivity of whales and dolphins), I'd like to welcome everybody here this afternoon, especially our guests: the Honourable Murray Sinclair, senator; Elizabeth May from Saanich—Gulf Islands; and, by video conference, Dr. Ingrid Visser, founder and principal scientist, Orca Research Trust.

We'll start off with our presentations very shortly. I'd like to recognize Mr. Gord Johns as a new member of the committee.

I thank Mr. Donnelly for his time and experience that he's shared with us at this committee.

Mr. Donnelly.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Thank you, Mr. Chair. I appreciate your giving me the floor, just momentarily, to thank members of the fisheries committee. For me it's been nine years of a lot of work. I've enjoyed working at this committee with all colleagues. I think we've looked at, reviewed and passed some good reports over the years—for me, three Parliaments. I am looking forward to the work continuing. I know we're looking at Bill S-203 today. Hopefully, that will move along quickly.

I'm turning it over to my colleague Mr. Gord Johns, member of Parliament. He's the new critic for fisheries and oceans and the Canadian Coast Guard for the New Democrats. I wish him well. I will watch from the sidelines.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Donnelly.

We'll start off now with our presentations.

I'll start with Ms. May. I know you're sharing your time with Dr. Visser.

Mr. Blaine Calkins (Red Deer—Lacombe, CPC): On a point of order, Mr. Chair, could you just remind the committee of the rules for quorum, please?

The Chair: Yes. The rules are:

That the Chair be authorized to hold meetings to receive evidence and to have that evidence published when a quorum is not present, provided that at least three (3)

members are present, including one (1) member of the opposition and one (1) member of the government.

Mr. Blaine Calkins: Thank you, Chair.

The Chair: Thank you for pointing that out.

Ms. May, when you're ready, between the two of you, you have seven minutes or less, please.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

I also want to extend congratulations to my friend and fellow Vancouver Islander Gord Johns for his new position within the New Democratic Party.

And from the bottom of my heart I thank Fin Donnelly for his work with us on getting this bill to this point.

I'd be very remiss if I did not extend thanks to retired senator Wilfred Moore, who is sitting right there and who brought this bill forward and introduced it on December 8, 2015. It's been quite a struggle.

To my esteemed colleague Judge Murray Sinclair, it's an honour to sit with you.

I also find it something of an irony that, as I sit here now, in the House we are extending messages of condolences and solidarity with the people of New Zealand after the brutal shootings in the mosques. Dr. Visser is actually in New Zealand.

Although this bill is one of the most important things I've ever worked on in the last eight years that I've been a member of Parliament, I have a role, as Leader of the Green Party, to rush back to the House to speak in rotation, so I will be very brief, recognizing that I am splitting my time with Dr. Visser.

I just want to share this with the committee as quickly as I can. It's been more than three years since this bill was introduced in the Senate. It finally passed third reading on October 23 of last year. In that period of time, it's hard to think of another bill that started in the Senate that has ever had as much review. It held 17 different committee meetings; more than 40 witnesses were heard. The bill has been very thoroughly studied, and so my plea may sound, I suppose, not unusual at this stage after a bill has been locked up for so very long in the Senate and finally made it to the House. I have to say it's been an enormous honour that Senator Moore asked me to co-sponsor this bill at the outset.

But now, I think the time for studying it is over. The time for passing it is now. If we were to make a single amendment, no matter how friendly or well intentioned, it would have the effect of killing this bill. Tens of thousands of Canadians want this bill passed. We hear from them in our constituency offices. We know many of them are children.

We want to see this bill passed because the science is on our side. At this point, we'll speak to the science.

Dr. Ingrid Visser, I could take the whole time I have available to both of us just to talk about your qualifications as an esteemed, internationally renowned scientist who understands the nature of cetaceans and what captivity does to them.

I'd like, with your permission, Mr. Chair, now to turn the floor back to New Zealand and our colleague Dr. Ingrid Visser.

• (1540)

Dr. Ingrid Visser (Founder and Principal Scientist, Orca Research Trust, As an Individual): Good afternoon, everybody.

I want to extend a thank you to all, for giving me the opportunity to assist you in your decision-making process for this timely and relevant bill. Thank you for the kind words.

I just wanted to point out that I am a scientist specializing in the study of cetaceans, and I definitely support this bill. I have a Ph.D. studying free-ranging orcas, but I've also been studying cetaceans for over two decades. Part of that has involved looking at them in the wild and in captivity. I've visited 35 different captive facilities in 16 different countries, both facilities in Canada and also a number in China and other areas. I have observed 13 species in captivity and 48 different species of whales, dolphins and porpoises in the wild. I've published 27 scientific articles, and those scientific articles have been cited over 800 times, with the top five articles being cited over 50 times.

The captivity industry in Canada is, as I understand it, self-regulating. Although in June 2015 I was invited by your ministry, along with Rob Laidlaw from Zoocheck, to provide input with respect to the formulation of standards for care for marine mammals in your country—and a number of the suggestions that I contributed were included—to my knowledge, none of those have actually been implemented by Marineland Canada.

It is my understanding that these standards are at the whim of the animal care committee, and that as of the 28 June this year, the OSPCA will no longer be enforcing animal welfare at zoos or aquariums in Canada. This indicates to me that there is a real need for federal legislation to ban the keeping of these animals.

I would like to refer you all to the submission that I made to your Senate, when this bill was before them, as it contains a range of information that remains pertinent to the discussion. However, I would like to quote briefly from it. This bill clearly allows for research, yet the industry continues to try, and I will quote here, to use the excuse of research benefiting conservation as an attempt to muddy the waters.

This is the quote:

Scientists, myself included, generally concede that in the past, there has been some research done on captive cetaceans that has helped us better understand their

wild conspecifics. However, ethically, today's research should only be conducted in facilities such as natural seaside sanctuaries or out in the open with wild animals. These will provide humane housing and husbandry conditions that better meet the needs of these animals. Such facilities would rationally also provide better data—

That's the end of the quote, but I'd like to emphasize here that this also means it would provide better opportunities for conservation, so I believe that their argument is actually null and void.

Lastly, I'd like to note that the Vancouver Aquarium used to have orcas. They no longer do. Likewise, they used to have belugas, false killer whales and harbour porpoises, and no longer do. Yet despite these species no longer being part of their aquarium, their business model continued, and some might argue that it has actually improved. I therefore can't see how this would be any different for them, should this bill be passed in the same form, at Marineland Canada. For these and the other reasons I have outlined in my submission, I respectfully request that you endorse the passing of this bill.

I would welcome any questions that you'd like to put forward to me.

Thank you.

The Chair: Thank you, Dr. Visser.

We'll now go to witnesses in person.

The Honourable Murray Sinclair, you have the floor for seven minutes or less, please.

Hon. Murray Sinclair (Senator, Manitoba, ISG): Thank you.

Thank you, Dr. Visser, for that. You have filled in a number of details.

I also want to thank the members of the committee for inviting me to be here to speak to this bill, which I took over sponsorship of after it outlived the career of Senator Moore, who retired while it was still in second reading.

We have essentially developed a bill in the Senate, which is an amendment to the Criminal Code, that makes captivity of cetaceans a criminal offence. If you look at it from that perspective, you'll see that there were some consequential amendments that had to be made such as those relating to exemptions as well as those relating to amendments to the Fisheries Act, all of which are set out in the bill.

The bill is a simple and straightforward one. It works from the presumption that placing these beautiful creatures into the kinds of pens that they have been kept in is inherently cruel and that, therefore, the Criminal Code amendments relating to cruelty to animals should be made applicable.

There are a number of consequential amendments that relate to that, such as the ban on the breeding of the animals, a ban on the import and export of parts of animals and the animals themselves, but essentially the bill is a straightforward Criminal Code amendment provision, and I think it very clearly addresses that.

I also want to just point out that the indictable offence and summary conviction offence penalties that are in place are in keeping with the Fisheries Act itself when it comes to the amounts of fines that can be imposed and the potential term of incarceration that can be imposed for an alternative to the fine, so I don't see that as being particularly out of line.

In addition to that, I also want to comment on correspondence that's been shared with members of the committee, I believe—it has certainly been shared with me—relating to concerns about the potential charging of Marineland, which is the only company in Canada that continues to deal with these animals in this way, that they might be subject to prosecution because some of the belugas that are in captivity right now are pregnant and may give birth afterwards.

The reality is that a pregnant beluga today would give birth after the bill is enacted, and Marineland would still be protected, because the beluga that is born would be part of the beluga that is inherently grandfathered into the legislation, if that is the right word for a pregnant beluga, but the reality is also that no one is going to prosecute someone who legally has the mother that gives birth to the whale after the legislation has been enacted or while the legislation is being enacted.

Those provisions that relate to the impregnating of whales will be for those that are impregnated following the passage of the legislation. I think we need to recognize that will be a particular offence that will be caught by the legislation.

The other question that has been raised has been: How does this bill work in conjunction with Bill C-68, which has already been passed by the House? Allow me to point out to you that Bill C-68 makes it an offence under the Fisheries Act to fish for cetaceans, but it doesn't make it an offence to breed them, and it doesn't make it an offence to sell the embryos or the body parts. It also doesn't make it an offence to trade internationally in the various parts of the animals. Those are amendments that are contained in Bill S-203, so there is a very distinct and clear separation here.

The third area I want to comment upon is the fact that the question has been raised as to whether this is provincial jurisdiction or federal jurisdiction. Provincial jurisdiction in the area of fisheries has to do with the licensing aspect of the business and not with regard to the criminality or the misconduct of individuals in the taking of the animal or the fish. In this case, this is very clearly a Criminal Code provision and a consequential amendment as a result of the Criminal Code amendment, so this very clearly falls within federal jurisdiction. It allows for exemptions to occur when they are subject to a provincial licence, and provincial licensing authorities are not impacted by this bill in any negative way.

• (1545)

I didn't really come here in order to spend a lot of time going through the bill with you because the bill is pretty straightforward. I commend to you the evidence from all of the expert witnesses who testified at the hearings, particularly the testimony of Dr. Visser. Someone raised the question, for example, of whether jobs might be affected by the closing down of Marineland. Marineland has enough beluga whales in existence to probably continue for another 30

years, so no jobs are going to be lost as a result of this in the immediate future.

My view would be that this amendment is necessary because, in the long run, our society will be much better off if we start to treat other creatures of this existence in the same way that we ourselves feel that we should be treated.

Thank you.

• (1550)

The Chair: Thank you, Mr. Sinclair.

We will now go to a round of questioning, first from the government side with Mr. Morrissey, for seven minutes or less, please.

Mr. Robert Morrissey (Egmont, Lib.): Thank you, Chair.

I wanted to begin by stating that I very much support the objectives of the bill. I agree with your closing comments, where you reference that no animal should be in captivity.

Beyond the potential job impact within the aquarium, Senator, was there any other negative economic impact as a result of this bill, outside of that direct one?

Senator Murray Sinclair: There was nothing raised at the committee when this matter was studied in the Senate.

Mr. Robert Morrissey: So it simply would be the direct impact on aquariums.

Senator Murray Sinclair: That's been raised.

Other than the potential closing of the aquarium down the road and the stopping of income with regard to the entertainment aspect of the business, there was no information that was shared with us with regard to the detailed impact of any economic loss that might be engendered by this particular amendment.

Mr. Robert Morrissey: I was surprised by your statement that it has enough beluga whales in existence to last for 30 years.

Senator Murray Sinclair: That's part of the expert testimony.

Mr. Robert Morrissey: Would that not be impacted by this legislation?

Senator Murray Sinclair: The number of belugas that are currently being held by Marineland—

Mr. Robert Morrissey: Would be exempted.

Senator Murray Sinclair: —would be grandfathered by this legislation, so they're not going to be affected by that. They have enough in captivity, according to the expert testimony that we've heard at the Senate committee—and maybe Dr. Visser has a comment on this—to be able to function as they currently function for a period of 20 to 30 years.

Mr. Robert Morrissey: Interesting. That's a substantive piece.

Dr. Visser, do you want to comment?

Dr. Ingrid Visser: I agree with Senator Sinclair.

Mr. Robert Morrissey: A level of concern has been the potential of overlapping parts of this bill with existing legislation. I take it the Senate dealt with that in detail?

Senator Murray Sinclair: The question is not clear enough for me, sir.

Mr. Robert Morrissey: A concern has been raised that this bill would have implications for parts of the Criminal Code. Therefore, it would result in government having to make amendments to it, to keep it in compliance with various other pieces of legislation.

Senator Murray Sinclair: Yes. The Criminal Code changes that are necessitated by this bill are addressed in the bill, so the particular provisions that would need to be amended are the very first part of Bill S-203. It addresses the fact that the definition of cetacean would need to be amended. Section 445 of the Criminal Code would need to be amended, and various exceptions—

Mr. Robert Morrissey: It does result in some amendments being required.

Senator Murray Sinclair: The intention was to really focus upon the fact that this is a cruelty-to-animals approach, as opposed to this being simply a Fisheries Act issue.

Mr. Robert Morrissey: The other part I want to expand on, briefly, would be the amount of study that was done in ensuring the jurisdictional role, provincial versus federal. You touched on it briefly in your closing comments when you said that you are comfortable in the recommendation as it relates to that.

• (1555)

Senator Murray Sinclair: Yes, both federal and provincial governments have jurisdiction over fisheries, and that's been true since the time of the British North America Act of 1867. The question was raised early on as to the nature of the provincial jurisdiction versus the nature of the federal jurisdiction.

The federal jurisdiction generally is to create the offence. The provincial jurisdiction is essentially to deal with licensing and the breaches of the licensing amendments or licensing provisions. Control of the resource is for the province to determine, but the criminality or the misconduct related to the taking of the resource would be an area of federal jurisdiction.

The federal government would have the authority, just as they do with respect to animals generally, to create an offence with regard to cruelty to animals, whether they're domestic animals or wild animals, but the province could issue licences with respect to the management of those animals themselves.

It's a very similar kind of jurisdictional dispute, jurisdictional overlap, so there is overlapping jurisdiction. There is no question about that, and in this case, the legislation in the bill recognizes and respects the right of provinces to create exemptions by issuing licences to operators to be able to do certain things that the lieutenant governor in council of each province would authorize them to do.

Mr. Robert Morrissey: So when you're referencing control of the resource, you're referencing the resource within captivity.

Am I correct?

Senator Murray Sinclair: No, it's the resource in the wild.

Mr. Robert Morrissey: It's the resource in the wild?

Senator Murray Sinclair: Within captivity, the province also has some degree of control.

Mr. Robert Morrissey: Some.

Senator Murray Sinclair: Yes, so they can manage, for example, the size of pens. They can define the movement of animals. They have some regulatory control, but the question of whether the taking of the animal—

Mr. Robert Morrissey: That's federal, isn't it, clearly?

Senator Murray Sinclair: —is under federal jurisdiction. It can be a federal jurisdiction.

Mr. Robert Morrissey: And this bill does not encroach on that.

Senator Murray Sinclair: If the federal government does not exercise its authority, then it's strictly up to the province to do what they want.

Mr. Robert Morrissey: As a third point, which I believe we got into when I addressed the question of the beluga whales, would you agree before the committee that once this bill comes into force, cetaceans born in captivity could be raised in captivity?

Senator Murray Sinclair: Yes, provided that they are from an animal that's grandfathered into the legislation.

The Chair: Thank you, Mr. Morrissey. Your seven minutes is up, I'm sorry.

Now we go to the Conservative side.

Mr. Calkins, go ahead for seven minutes or less, please.

Mr. Blaine Calkins: Thank you, Chair.

Thank you, Senator, for being here.

Senator, would you agree that people would go to a zoo or go to a national park to see wildlife for the purpose of entertainment or for intrinsic values?

Senator Murray Sinclair: I would say not exclusively, no. People watch TV in order to see wildlife. People look at pictures in order to see wildlife. People look at videos—

Mr. Blaine Calkins: That wasn't my question.

My question to you was that we pay a fee to go to a zoo. Would you agree with that statement?

Senator Murray Sinclair: Certainly.

Mr. Blaine Calkins: We pay a fee to go to our national parks, sometimes. Would you agree with that statement?

Senator Murray Sinclair: I agree with that.

Mr. Blaine Calkins: People invariably see animals when they're at a zoo and when they're in a national park. Does that provide value to their experience?

Senator Murray Sinclair: I don't know. I've been to national parks without seeing animals sometimes, but I understand your point.

Mr. Blaine Calkins: All right. I'm not trying to be difficult. I'm trying to find a way for me to go ahead and support a piece of legislation that at the outset looks as though it could be flawed in some ways.

I'm a former park worker. I love animals. I dedicated a portion of my life as a conservation officer to protecting and conserving wild places and wild spaces. I know that a number of zoos, for example, have captive breeding programs. Take a look at Elk Island National Park, for example, in my home province of Alberta, which is unlike any other national park, yet a park fee still applies to that park. You can go in and see bison basically in captivity, because it's a fenced park. It's not a natural park where they are free to go wherever they want, and it's the same with the bison. Those bison from Elk Island National Park were used to establish a wild herd in Banff National Park.

I'm just wondering about precedence when it comes to the pieces of legislation.

I'm not going to argue or debate what people who know more about the science of cetaceans in captivity might do, but I'm here to discuss the merits of this piece of legislation.

• (1600)

Senator Murray Sinclair: Right.

Mr. Blaine Calkins: I'm wondering if these conversations came up in the Senate examination of this bill. Unlike Elizabeth May, I don't know if three hours in the House of Commons—the elected chamber—is enough to properly scrutinize the bill, notwithstanding that the Senate has done a thorough job. I'm not disputing that.

I am a little bit concerned that we're going to have three hours to examine this bill with witnesses without hearing from the minister, or without hearing from other people who we would normally hear from in a legislative process. I'm just trying to figure this out as the best I can in the time I have.

We have people who are willing to pay money to see animals in a national park. National parks have a mandate to protect and preserve species, even in captivity. If the legislation that we have before us today actually applied to elk, bison or anything like that, it would be a very different scenario, where zoos would have to apply for permits and apply for things that they would otherwise be able to do as a matter of normal business. No one's questioning the integrity of a zoo or no one's questioning the integrity of a national park, yet we're questioning the integrity of these other organizations that are providing entertainment. I'll get to my point about that as well.

When I took my family to go whale-watching once, we paid several hundred dollars apiece for the privilege of going out and taking a look at a whale in the wild. If I were to take my family to SeaWorld or something like that if I'm on a holiday, my family would have the same experience without actually disturbing any animals in the wild for a fraction of that cost. Children attending schools that would want to go to these things would be able to attend at a fraction of the cost if there happened to be one in the area.

Have any of these things been brought up in the Senate? What has the response been from those who want to defend this bill?

Senator Murray Sinclair: Absolutely, it has been brought up.

Some interesting research was brought to the attention of members of the Senate committee. I've forgotten the name of the expert—perhaps Dr. Visser remembers. It was about the impact upon children who go to zoos and aquariums to observe animals and what that does

to their sense of those animals. There's been some suggestion made in the research that their view of the animals becomes tainted by the fact that they see these animals in captivity versus seeing them in the wild. Dr. Visser is nodding her head, so I'm sure she's aware of the research.

The impact upon children seeing animals that are penned up and in captivity is generally not considered to be an all-that-positive view of things. There's no question that they see animals that they might not otherwise see living, but what they think of those animals afterwards is that they lose the sense of their validity as beings and part of creation.

Mr. Blaine Calkins: Everybody is going to have an opinion when they see something, whether they like what they're seeing or what they're not—

Senator Murray Sinclair: That's part of the research that was done on the impact on children.

Mr. Blaine Calkins: Yes.

The Arabian unicorn was down to six animals and is now over 1,000 because of a captive breeding program. Now people can actually go into the wild and see them. Had they not gone through that captive breeding program there would be none, frankly, for anybody to see or to enjoy. At this particular point in time the Arabian unicorn would likely be extinct.

Again, I'll go back to my concerns with the legislation. I'm not concerned about the intent. I'm not concerned about what good is trying to be done here. I'm worried about the precedent. It's not like other elements of animal welfare in the Criminal Code, like cock-fighting, dog-fighting and actual human abuse of animals. One's definition of what constitutes abuse is what's actually in question here and whether keeping an animal in captivity is abusive. I don't know, I keep my dog in my house and nobody is.... They're different animals; there's different research and I get that.

I'm wondering about the precedent. As I read it, it doesn't allow for anybody to do anything like captive breeding unless they actually get a permit and they have to apply for a licence to do that. The exceptions that are here that allow somebody to actually be in possession would have to meet the test. For example, if something catastrophic were to happen to a pod of dolphins that need to be rescued.... I know that it says here that on the individual basis, an individual who has the custody or control of cetacean—that's an individual cetacean—"that is kept in captivity for the purpose of providing it with assistance", but nothing about keeping a population or rescuing a population.

Has that been given any thought in the Senate?

• (1605)

Senator Murray Sinclair: Absolutely.

We're not talking here about endangered species that are on the verge of extinction unless we put them into a captive breeding program. If we were, there would be a different piece of legislation in front of us to consider.

The reality is that these are animals that are thriving in the wild. They're living fulfilled lives in the wild, and we're taking them from their fulfilled existence and placing them into a contained environment solely—if not primarily—for the purpose of putting them on display so that people can make money off them. That's the reality we're trying to address with this bill.

Mr. Blaine Calkins: So does a zoo.

The Chair: Thank you—

Senator Murray Sinclair: No, a zoo does not do it for that purpose.

Dr. Visser.

The Chair: Please be quick, because time is up.

Dr. Ingrid Visser: Yes, absolutely.

I'd just like to respectfully point out that the price to go and see these animals in captivity is actually more than going to see them through many of the whale-watching companies around the world. That argument, then, is often null and void.

Also, in terms of abuse, we have documented extensive abuse of these animals. I am looking for the unicorn whale. I'm looking for that individual in all of these facilities that I've been to around the world that doesn't show through its own behaviour that it has been abused.

We have substantial scientific evidence that shows that these animals are severely compromised biologically, behaviourally and welfare-wise. In fact, Marineland Canada cannot meet a single one of the five freedoms, which is the absolute minimum we look at for welfare in animals in captivity or in your own home.

I think there has been a substantial amount of evidence provided by a number of different expert witnesses to the Senate. They have done an extraordinary level of background research on this, and I think they have presented it to you in a very robust manner.

Your arguments are very valid about these animals—the other species that have been bred in captivity for release into the wild. However, it's worth noting that no one in Canada is doing this.

Also, despite the fact that this is breeding going on at Marineland, those animals come from Russia from a depleted population, probably depleted because of the captures that were made there for the aquarium industry. Those animals are not going back to Russia. Most likely they can't be released into the wild, because they were born in captivity and they don't have the survival skills.

Dealing with a carnivore—like a fish-eating whale—is different from dealing with something like the oryx you were talking about or the bison that are herbivores. You need a different set of life skills—

The Chair: Thank you, Dr. Visser.

We've gone way over time, and hopefully you'll get to finish your statement through more questioning.

Dr. Ingrid Visser: Sure.

The Chair: Now we'll go to the NDP for seven minutes or less.

Mr. Johns.

Mr. Gord Johns (Courtenay—Alberni, NDP): Thank you, Mr. Chair.

It's a huge honour to be joining your committee. I've met many of you on our tour to the east coast to study the decline of the Atlantic salmon and the Atlantic cod.

I also want to thank my colleague from Port Moody-Coquitlam for his nine years sitting on this committee and the important work he's done advocating for our salmon and all of the species in our oceans.

I come here from a coastal community. I certainly understand the pressures on our oceans right now and on the species that live in them.

I want to thank retired senator Moore for bringing this forward and Senator Sinclair for continuing to pursue seeing this bill get adopted and this legislation passed.

Before I get started, Ms. Visser, I also want to acknowledge the tragedy that's happened in New Zealand. On behalf of the New Democrats, we send our condolences to all kiwis and Muslims in your country.

Maybe I will start with Senator Sinclair. This bill has had more than 17 meetings and 40 witnesses, I believe. Do you believe that this has been studied enough, that it's ready now to continue to move forward?

Senator Murray Sinclair: My view would be that I can't imagine there being a new issue that couldn't have been raised or wasn't raised at the Senate committee hearings. The new issue that's being raised by Marineland about the potential criminality of baby whales being born after the legislation comes into effect could have been raised during the time the bill was before the Senate. It wasn't. Despite the three years that it was there, no one made mention of this fact, so I'd just consider it a delaying tactic.

The reality is that it's not going to result in any criminality, in any event.

The other reality is that I think that anyone concerned about what the research is going to tell you or what witnesses are going to say can take a look at the witness list that appeared before the Senate. It's as complete a list as you're ever going to see, including the owner of Marineland, who testified before the committee when he was still alive and talked about the impact this would likely have upon not only his business but his community.

• (1610)

Mr. Gord Johns: Agreed. We know this bill shouldn't be a partisan issue. It's a moral issue. It's supported by science. Cetaceans in captivity suffer in a way that's not justifiable. Bill S-203 is a reasonable, balanced piece of legislation. We believe that as well. An amendment would likely push this bill in terms of the timeline. It wouldn't get passed.

Can you agree that delay might push this out?

Senator Murray Sinclair: There's no question that if it comes back to the Senate with an amendment we have to consider, the delay tactics that have been used in the past to delay this bill from becoming passed through the Senate for three years will be re-employed. The committee structure that's in place over there favours those kinds of delay tactics. As a result, I think it's marking the bill for death if it gets sent back to us.

Mr. Gord Johns: I just wanted to talk a bit about the moral issue, a little away from the science. You and I, Senator, have a friend, Barney Williams, an elder from the Nuu-chah-nulth communities. Where I live in the Nuu-chah-nulth communities, they see the *kakaw'in*, which are the orcas, as the wolves of the sea, and they also see them as souls of themselves. This is very disturbing, to see cetaceans in captivity.

Can you maybe speak about indigenous lands and what you've heard from the indigenous communities?

Senator Murray Sinclair: I commend you to the third reading speech that I gave in which I talked about that, because everything comes from one's perspective of creation and one's teachings around creation. In the Senate, I spoke about the fact that in our teachings—and this is true for several if not all of the indigenous groups across Canada—human beings were not placed upon the earth in order to dominate the earth and to exploit the resources of the earth. They were placed here to enable us to use them in balance with all other beings of creation.

While we recognize that as a predator species we have an obligation, for survival reasons, to depend upon other species to survive, in the doing of that, in the taking of those lives, we also have an obligation to take no more than we need and to take care of the spirit of that animal, to take care of our own spirit in the taking of that animal. It's a very unique perspective of things. I think it still resonates within many indigenous communities today.

All of us who come from a traditional perspective within indigenous communities often also draw upon the animal world for our spirit names. There is that strong connection to that part of the creation, and to the earth itself. That's not to say that we haven't learned and won't learn how to function within western society, but carrying those traditions and those teachings is an important part of our ability to function in balance throughout this creation.

Mr. Gord Johns: Thank you.

Dr. Visser, I have a couple of questions for you. When you were observing different whales and dolphins at facilities like Marineland and Vancouver Aquarium, what struck you in terms of the behaviour of cetaceans and different types of things that were prevalent?

Dr. Ingrid Visser: I have observed literally hundreds of different individuals. I can say without a doubt that every single one of them has shown neurotic, abnormal, repetitive behaviours. The scientific term for those is “stereotypy”. Stereotypies can range from self-harming behaviours with the animal banging their head against the wall until they literally rip the skin off, to chewing on concrete where they will wear their teeth down to the gums and fracture teeth. It can be regurgitating their food continually. That can have all sorts of implications with acid burning of the esophagus.

There are all sorts of other abnormal behaviours like elevated hyper-aggressive behaviour. It all accumulates into what we have termed chronic stress. The implication of chronic stress is exactly the same as it is for us. It's just not good for your health.

• (1615)

Mr. Gord Johns: Can you—

The Chair: Mr. Johns, your seven minutes is more than up. Perhaps you can get in another couple as we go forward.

Now we go back to the government side, and Mr. Hardie, for seven minutes or less, please.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you, Mr. Chair.

Thank you both for being here, and Dr. Visser. Some of us were a little late. I didn't get to hear your opening comments because we were listening to comments of our Prime Minister in the House on the issues in New Zealand.

I remember when we had our first killer whales, our first orcas, in the Vancouver Aquarium. What we noticed at the time was the dorsal fin. It is usually straight up and down, very rigid in the wild. It was curved over.

Dr. Visser, do we know why that happens?

Dr. Ingrid Visser: In essence, yes, and in essence, no. It's a very complicated question with an even more complex answer, but in essence, yes. One hundred percent of the adult male orcas in captivity have collapsed dorsal fins, yet in the wild, it's less than 1%.

Mr. Ken Hardie: So something's going on there.

I will ask you both to comment on this. We're talking about captivity, but should we make a distinction between being in captivity and being in custody, where for instance an animal could be kept in the ocean, but perhaps limited for a certain period of time, so that medical needs could be administered or we could find out exactly why it's sick?

Being in custody, in that fashion, would that not necessarily fall under the concerns that you have about being in captivity?

Senator Murray Sinclair: Yes. If you look at the provisions of the bill, you will see that there are exemptions for the taking of cetaceans into captivity for purposes of addressing issues of distress that the animal may be undergoing or to provide assistance to the animal, to use the wording of Bill C-68.

There is a recognition that, from time to time, that is justifiable and it's an exception to the prohibition that's contained in the legislation.

Perhaps Dr. Visser can talk about how that is best done, but the reality is that we did consider that and there is an exception within the bill at present.

Mr. Ken Hardie: I have other questions here, so I will have to move on from that.

During our constituency week last week, I was informed about a bit more of the story of J50, a female orca that was evidently very ill and eventually disappeared after some interventions to give her medicine, etc., but obviously, they didn't work.

There appear to be complications because of the lack of symmetry between what we can or can't do in Canada versus what they can or can't do in the United States. In the case of the southern resident orcas, they go back and forth across the border.

Is there anything in the Senate bill that would look to the need to consult with our neighbours to see if we can come up with something that's going to be useful and consistent?

Senator Murray Sinclair: Since the Senate bill addresses primarily a Criminal Code cruelty to animals approach, it is really a question of jurisdiction over the animal at the time of the taking into captivity and the things that happen while in captivity.

The question of whether or not, scientifically, there are things that can be done, in order to address the care of the animal, while in the wild or while under distress, is probably something Dr. Visser can better address than I can because that's a scientific question.

Mr. Ken Hardie: Hopefully, we can ask for a fairly short description, please, Dr. Visser.

Dr. Ingrid Visser: Sure. I was actually involved with the situation with J50 and was on the ground there trying to help, so I'm very familiar with it. I believe there was a lot of collaboration between both governments.

The legislation that's being proposed before you now does make allowance for individuals to go into sanctuaries. Those sanctuaries are different from the barren concrete tanks that we're discussing under this bill.

• (1620)

Mr. Ken Hardie: Yes and I think the distinction between a sanctuary and custody should be fairly clear, so everybody understands what we are talking about here.

It would appear that our relationship with cetaceans has changed over time. They have imprinted on us.... There's a marvellous video of two orcas chasing a boat that's going at a good clip and these orcas are almost surfing on the wake.

We heard from some folks up in Churchill, where one of their primary industries up there is whale-watching. They were concerned about the space allowance regulation between an observation boat and a beluga. The boats would always be running away because the belugas are naturally curious and want to come up and say hello.

Have we reached a tipping point, in terms of our interventions and our interference with this wildlife, where it's almost impossible to roll back the clock?

Senator Murray Sinclair: Well, I'm sure there's a scientific explanation that you can hear from Dr. Visser and others. It's in the material that was before the Senate.

I'll refer to the question I was asked earlier by Mr. Johns, who referenced our mutual friend Barney Williams, who's an elder in Nuw-chah-nulth first nation area. His comments upon things like that are similar to the comments of some of the Inuit people I'm familiar with. They would tell you that when you have that kind of relationship with the creatures around you, you have the ability to communicate with them as and when they want to communicate with you and you want to communicate with them.

I don't think this is a new phenomenon. I don't think this is a situation in which suddenly the animals have started to come to like us from time to time or appreciate us. I think that in fact, when they have been treated well in the past, they've shown a willingness to return that view.

The tribes on the west coast always have talked about those stories as well.

Mr. Ken Hardie: All right. Thank you very much.

The Chair: Now we go to the Conservative side, to Mr. Doherty—for five minutes or less, please.

Mr. Todd Doherty (Cariboo—Prince George, CPC): Thank you, Mr. Chair.

I still want to call you Justice Sinclair.

Senator Murray Sinclair: Don't worry. I respond to anything.

Mr. Todd Doherty: I only have five minutes, but I first want to preface this by saying thank you for the enormous work you did on the Truth and Reconciliation Commission. As a member of Parliament who has the Highway of Tears going through my riding of Cariboo—Prince George and whose wife and children are indigenous, I appreciate the enormous work you did on it. I know it took a great personal toll on you.

Senator Murray Sinclair: Thank you very much.

Mr. Todd Doherty: I'm going to also say that I'm not a lawyer, nor am I a biologist. I have some questions that, hopefully, you can help me with.

Bill C-68 was passed in the House of Commons on June 20, 2018. It bans the capture of cetaceans in Canadian waters, unless the animal is in distress or in need of care. Why do we need Bill S-203?

Senator Murray Sinclair: I was here earlier and commented upon that.

Mr. Todd Doherty: Yes. I'm sorry; I missed that.

Senator Murray Sinclair: I realize that you were in the House and listening to the statements. Let me just repeat what I said earlier.

Bill C-68 does that, but it does it by amending the Fisheries Act. It's a Fisheries Act offence and therefore not a Criminal Code offence; it doesn't place this activity into the cruelty to animals provisions of the Criminal Code; Bill S-203 does. This is palatable and is something you can do. You can have two pieces of legislation arising from the same incident, creating separate offences under separate legislation.

The other thing Bill S-203 does, which Bill C-68 does not do, is prohibit the sale of cetaceans. It prohibits the sale of parts of cetaceans and controls international trade.

Mr. Todd Doherty: Okay.

You're familiar with the piece of legislation. I have another question. Proposed subsection 445.2(4), reads:

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 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.

Millions of Canadians go south of the border and take part in swimming with dolphins or other shows down in that area. They are coming back and posting pictures to their Facebook or social media of their children and themselves participating in this.

Are they by virtue of this proposed subsection committing a crime?

• (1625)

Senator Murray Sinclair: No. It's just like going to the United States and driving drunk down there: you are or may be committing an offence down there—or you may not be—but that fact does not mean you can be prosecuted in Canada for doing it down there, unless you are subject to the extraterritorial provisions.

Mr. Todd Doherty: What about posting and promoting it in your social media?

Senator Murray Sinclair: I don't think that simply posting your experience in another jurisdiction is promoting it.

Mr. Todd Doherty: Okay. How about a Canadian organization that then divests itself of the cetaceans it has to another group, another organization? Is that act aiding and abetting as well? Under this piece of legislation, would they then be breaking the law?

Senator Murray Sinclair: No, because the legislation specifically grandfathered those animals that are in captivity at present. So it would allow Marineland, for example, to get rid of its existing stock, if it wishes, because those animals and its possession of those animals are not subject to this legislation.

Mr. Todd Doherty: Marineland or Vancouver Aquarium, I think, still have some—

Senator Murray Sinclair: It would be whatever they have in their possession, yes.

Mr. Todd Doherty: But selling that or gifting it to a different organization would not be breaking the law as well?

Senator Murray Sinclair: As far as I can read this bill, that's right.

Dr. Visser.

Dr. Ingrid Visser: I was just going to comment that Vancouver Aquarium has only one animal.

Mr. Todd Doherty: Okay.

The Chair: Mr. Doherty, your time is up.

That concludes our first hour with witnesses. I would like to thank Dr. Visser for appearing by video conference from New Zealand. I know other people mentioned it and offered our support and condolences with regard to the activities that took place. On behalf of everybody here on the committee and on behalf of Canadians, please accept our sincere condolences and our support as you deal with the recent activities.

Mr. Sinclair, thank you for appearing before committee.

We'll just suspend for a couple of minutes to change out our witnesses and get going on our next hour.

Senator Murray Sinclair: Thank you very much, Mr. Chair, and thank you for allowing me to be here. If anybody has any questions that I can answer outside of the committee meeting, I'll be glad to do so.

The Chair: Thank you. We'll suspend for a couple of minutes.

• (1625)

(Pause)

• (1630)

The Chair: Okay, we'll start again.

I'll welcome our guests. From the Department of Justice, we have Joanne Klineberg, senior counsel, criminal law policy section. From the Department of Fisheries and Oceans, back with us again, we have Adam Burns, director general, fisheries resource management. From the Department of the Environment, we have Carolina Caceres, manager, international biodiversity, Canadian wildlife service.

Welcome to all three of you. We'll start off with your opening statements of seven minutes or less.

Ms. Klineberg, would you like to go first?

Mr. Adam Burns (Director General, Fisheries Resource Management, Department of Fisheries and Oceans): I think it's just me.

Good afternoon.

I would like to thank the committee for the invitation to speak to Bill S-203, an act to amend the Criminal Code and other acts (ending the captivity of whales and dolphins), also known as ending the captivity of whales and dolphins act.

This bill proposes amendments to the Criminal Code, the Fisheries Act, and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, WAPPRITA.

Before I address the substance of Bill S-203, it's important to review the number and location of cetaceans held in captivity in Canada. To my knowledge, there are two facilities in Canada that hold cetaceans in captivity, the Vancouver Aquarium in British Columbia, and Marineland in Niagara Falls, Ontario. The Vancouver Aquarium has one cetacean in captivity, a 30-year old Pacific white-sided dolphin. It was rescued from the wild and deemed non-releasable. In January 2018, the aquarium announced that it would no longer display cetaceans at its facility.

The majority of Canada's cetaceans in captivity are located at Marineland in Ontario. My understanding is that it has approximately 61 cetaceans: 55 beluga whales, five bottlenose dolphins and one orca or killer whale. In 2015, the Province of Ontario enacted legislation banning the possession or breeding of an orca whale; however, the prohibition provided for an exception for the possession of the orca currently in captivity at Marineland.

With that context in mind, my remarks this afternoon will focus on Bill S-203's proposed amendments to the Fisheries Act. I will let my colleagues from the Department of Justice and Environment and Climate Change Canada respond to your questions concerning the bill's proposed amendments to the Criminal Code and WAPPRITA.

Having said that, I will briefly outline the bill's proposed amendments.

Bill S-203 proposes amendments to the Criminal Code that would make it a criminal offence to own or have custody of or breed a cetacean, or possess its reproductive materials. Cetaceans currently in captivity would be grandfathered under the bill. There's an exception to the captivity prohibition for cetaceans that are injured and require assistance, care or rehabilitation, or when captivity is deemed to be in the animal's best interests as determined by provincial authorities. The bill's prohibition on breeding or possessing a cetacean's reproductive materials would not be grandfathered.

The bill's proposed amendments to the Fisheries Act would prohibit the moving of a live cetacean from its immediate vicinity for the purpose of captivity unless it is injured or in distress and in need of care.

Bill S-203's proposed amendments to WAPPRIITA would prohibit the import and export of a live cetacean or its reproductive materials unless authorized by the Minister of Environment and Climate Change for scientific research purposes or if it's in the cetacean's best interests.

With that as an overview of the bill, I will now turn my attention to the proposed Fisheries Act amendments in Bill C-68.

The capture of cetaceans from the wild falls within federal jurisdiction, and specifically falls under the authority of the Minister of Fisheries, Oceans and the Canadian Coast Guard. The committee may want to consider how the provisions in Bill C-68, which was approved by the House, and is currently in the Senate, addressed the objectives of Bill S-203; that is, phasing out the captivity of cetaceans while building in exceptions for the rescue and rehabilitation of those animals.

The government introduced Bill C-68, an act to amend the Fisheries Act and other acts in consequence, on February 6, 2018. Included in the amendments were provisions related to the captivity of cetaceans. Specifically, Bill C-68 contains a prohibition against fishing for a cetacean with the intent to take it into captivity, except where authorized by the minister for animal welfare reasons.

It's important to note that as a matter of policy, Fisheries and Oceans Canada has not issued a licence for the capture of a live cetacean for public display purposes since the early 1990s. The proposed amendment will simply codify the department's long-standing practice.

In addition to the cetaceans in captivity provision, Bill C-68 contains a new authority to make regulations with respect to the import and export of fish. Cetaceans are defined as fish for the purposes of the Fisheries Act. The department's view is that this regulation-making authority would give the government more discretion to determine the circumstances under which cetaceans could be imported into and exported from Canada. For example, there could be an import prohibition where the purpose is to keep a cetacean in captivity.

By way of exception, import or export could be permitted where the purpose is to transfer the cetacean to a sea sanctuary should those facilities be established in the future. There may also be circumstances where the captivity of a cetacean is deemed necessary to conserve or protect the species.

Like Bill S-203, Bill C-68 contains a non-derogation clause affirming that none of the proposed amendments affect the existing aboriginal and treaty rights of aboriginal peoples protected by the Constitution.

• (1635)

Minister LeBlanc, the former minister of Fisheries, Oceans and the Canadian Coast Guard, acknowledged that the amendments to the Fisheries Act proposed in Bill C-68 related to the fishing for cetaceans with the intent to take them into captivity were inspired by Bill S-203 and in particular by the work of now retired senator Moore.

That concludes my remarks. I thank you once again for the invitation to speak on S-203 and will be happy to take your questions.

The Chair: Thank you.

There's a bit of time to spare, which is always good.

We'll now go to the government side with Mr. Rogers for seven minutes or less, please.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Thank you, Mr. Burns, for that information and clarification of some of the key points here.

I have a few questions. The main concern raised about captivity of cetaceans relates to their well-being. Are there measures other than legislated ban on captivity of cetaceans that could be implemented to ensure the well-being of captive cetaceans?

• (1640)

Mr. Adam Burns: I can start, and I'll probably pass it to my colleague from the Department of Justice.

Within the scope of the Fisheries Act, our mandate doesn't really fall within the scope of regulating activities that occur within an aquarium. As I mentioned, for example, the Province of Ontario has enacted legislation banning captive breeding of orcas and even the holding of orcas, as I understand it, with the grandfathering of the one currently in captivity at Marineland. In terms of Fisheries and Oceans Canada, it would fall outside the scope of the Fisheries Act.

Ms. Joanne Klineberg: If I understand your question correctly, nothing prevents a person who has possession of an animal from doing their utmost on their own to adhere to the best scientific standards and so on and to do whatever is in their power to take care of the animal.

If I'm reading between the lines of your question, I think the question is, what can governments do, and what types of laws are there that apply to these types of situations?

In the area of animal welfare, as Senator Sinclair hinted at in his testimony, there is overlapping federal criminal jurisdiction and provincial jurisdiction over animal welfare, so there are laws in all the provinces, including, obviously, Ontario and British Columbia, which are the two provinces that have facilities that house cetaceans, that are general animal welfare legislation.

In much the same way that provinces have legislation for the protection of the welfare of children, these provinces have jurisdiction and they have legislation over the protection of the welfare of animals as well. But again, just because a matter might be approached through a provincial lens doesn't necessarily mean that there isn't federal jurisdiction in the area of criminal law, so there are, at present, offences in the Criminal Code that prohibit causing unnecessary pain, injury or suffering to an animal. Those would apply to pretty much any animal, so they're already in place, but those offences require proof that a particular animal was made to suffer pain or injury through the actions of individuals.

Mr. Churence Rogers: I'm curious if legislation is always necessary to bring about the change we want.

Vancouver Aquarium is appearing later today, and I know they have concerns regarding the Criminal Code aspects of the bill making it more difficult to do their research.

Do you have any comments on how they could potentially be affected by this bill?

Ms. Joanne Klineberg: I appreciate your earlier question. I only know legislation, so that's why I give you that answer. All I can tell you, again, is that, when I look at the legislation and I read what it says in terms of the scientific research, it says that, though generally it would appear to be something that would be prohibited by the legislation, it is nonetheless an activity for which a person could obtain authorization from their provincial government in order to be engaged in that activity.

Mr. Churence Rogers: Mr. Burns, you spoke about amendments in Bill C-68 and said that they could achieve similar objectives to Bill S-203. Can you expand on this and compare the changes in the Fisheries Act through Bill C-68 with the changes being proposed here through Bill S-203?

Mr. Adam Burns: In essence, C-68 would create two provisions.

In no particular order, the first would eliminate the ability for the minister to issue a licence for the taking into captivity of a cetacean for public display purposes, for example. Whales would no longer be able to be captured in Canadian waters for those purposes. Again, that hasn't been authorized since the 1990s anyway, but it would put that into legislation.

The other change is that it would give the government a regulation making authority regarding import and export. That would, in essence, give the government the ability to implement a regulation that would prohibit the importation of a whale or dolphin for public display, as well as the export of those animals for those purposes. As I understand it, it's a fairly broad-ranging regulatory power that would be given to the government in order to close the door to new animals being brought into the country or animals leaving the country.

• (1645)

Mr. Churence Rogers: Thank you for that, because you just answered the second question I had for you on that as well.

The Chair: Thank you.

Now we'll go to the Conservative side. Mr. Doherty, you have seven minutes or less please.

Mr. Todd Doherty: Ms. Klineberg, animal welfare legislation usually focuses on the animal and the act, or the cruelty of the act, that causes distress on the animals. Is that correct?

Ms. Joanne Klineberg: Well...

Mr. Todd Doherty: Is that a fair comment, though?

Ms. Joanne Klineberg: Certainly provincial legislation aims at the prevention of animal cruelty and the protection of animal welfare.

Mr. Todd Doherty: Bill S-203 does not express any of that, correct?

Ms. Joanne Klineberg: Well, the sponsors of S-203 have indicated that they are approaching it through the lens of the keeping of cetaceans in captivity.

Mr. Todd Doherty: It doesn't express any of that.

Ms. Joanne Klineberg: I would only say that in proper criminal law, we don't see those words used in the provisions that would amend the Criminal Code. The whole entire purpose of the criminal law is to declare which actions are morally against our social values.

Mr. Todd Doherty: Okay. Does S-203 permit educational shows?

Ms. Joanne Klineberg: If we look at the offence that pertains to the performances, they talk about performances for entertainment purposes.

Mr. Todd Doherty: Right. What is criminal under this bill, aside from capturing for the purpose of... I'm going to go back to the question that I asked Senator Sinclair. In that paragraph, everyone 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 for performance for entertainment purposes unless such performance is authorized pursuant to a license issued by the Lieutenant Governor in Council of a province or by such...person or authority in the province as may be specified by the Lieutenant Governor in Council

In taking part in an event such as that—just by virtue of that paragraph—you could be breaking the law or committing an offence.

Ms. Joanne Klineberg: One way to look at what “takes part in”.... I noticed the other question that you asked Senator Sinclair talked about “promotes”. In interpreting the scope of this offence, one would look at all those action verbs. “Promotes”—

Mr. Todd Doherty: I am sorry, is it fair to say that they...?

Ms. Joanne Klineberg: “Takes part in” might be interpreted to require that it's somebody actually taking part in the organization of it, as opposed to just the observer.

Mr. Todd Doherty: Well, that's not true. It says, “takes part in any meeting, competition, exhibition, pastime, practice”—i.e., holidays—“display or event in the course of which captive cetaceans are used for performance for entertainment purposes”.

With that line there, they would be breaking the law or committing an offence. It could be interpreted that way.

Ms. Joanne Klineberg: I think there is a broad interpretation and then an interpretation that focuses on the people organizing the event.

Mr. Todd Doherty: Okay, I have another question to that. It's a follow-up question to Senator Sinclair. If one of our Canadian facilities is transferring—gifting or otherwise—to another organization, would they not be then contributing to committing a crime, because they are then aiding and abetting the organization that is getting the cetacean to continue a performance, whether it is for entertainment purposes...?

Ms. Joanne Klineberg: I'm not entirely certain that I understand the factual description.

Mr. Todd Doherty: I'm going to go back to Mr. Burns' comment where he said, "Bill S-203's proposed amendments to WAPPRIITA would prohibit the import and export of a live cetacean or its reproductive materials unless authorized by the Minister of Environment and Climate Change for scientific research purposes or if it's in the cetacean's best interests."

That comment alone, coupled with that paragraph in the piece of legislation, would then lead a reasonable person to believe that if the Vancouver Aquarium is transferring its last dolphin to another organization that does have performances or does conduct performances for entertainment purposes, it would then be in conflict of the law and committing an offence.

• (1650)

Ms. Joanne Klineberg: You mean if the animal is sent outside of Canada?

Mr. Todd Doherty: Right.

Ms. Joanne Klineberg: What would that mean?

The exportation is not covered by the Criminal Code provisions.

Mr. Todd Doherty: However, it is saying that it prohibits the import and export unless it is authorized by the Minister of Environment and Climate Change for scientific purposes and if it's in the cetacean's best interests. Isn't it the whole purpose of Bill S-203 to say that these types of performances are not in the best interests of the cetaceans? Could one argue that?

Ms. Carolina Caceres (Manager, International Biodiversity, Canadian Wildlife Service, Department of the Environment): What I could speak to is WAPPRIITA. You're talking about the export and then the conditions around export as potentially....

My role in Environment and Climate Change Canada is in relation to WAPPRIITA. When I look at Bill S-203—and if I understand your question correctly—it says that there shall be no authorization of exports of a living cetacean, and the exceptions proposed are for "conducting scientific research" or "keeping the cetacean in captivity if it is in the best interests of the cetacean's welfare".

Mr. Todd Doherty: Let's say that the Vancouver Aquarium then divests itself of its last—or Marineland for that matter—beluga whales to an organization that is solely for entertainment purposes. It is then breaking the law.

Ms. Carolina Caceres: I'm not a lawyer, but if I understand Bill S-203 correctly, it would be up to the minister to determine whether that transfer is in the best interests of the cetacean's welfare.

Mr. Todd Doherty: Right, but the purpose of Bill S-203 is to say that those types of performances.... We as a nation are saying that we're passing this legislation because that type of performance is not in the best interests of the cetacean. Is that correct?

Ms. Joanne Klineberg: Yes. It would seem to be a reason not to authorize the export of the animal.

The Chair: Now we'll go to the NDP.

Mr. Johns, you have seven minutes or less.

Mr. Gord Johns: Thank you, Mr. Chair.

Thank you, all, for your testimony. Maybe I'll start with Fisheries and Oceans.

Can you tell us the difference between Bill S-203 and Bill C-68? What would Bill S-203 prohibit that Bill C-68 would allow?

Mr. Adam Burns: The provisions in Bill C-68 that sort of parallel the objectives of Bill S-203 are entirely within the scope of the Fisheries Act. As I mentioned earlier, it would basically prevent the minister from authorizing, essentially, the capture of a cetacean from Canadian fisheries waters for public display purposes—which we haven't done since the 1990s—as well as provide the government with a regulation-making authority that could then be used to close the door on the import of any new animals brought in for those purposes as well.

I think your question, then, relates to provisions within Bill S-203 that are outside the scope of the Fisheries Act. Really, the one point would be about the captive breeding, which the Province of Ontario has exercised jurisdiction on with regard to orcas and the captive breeding of orcas.

In terms of the import restrictions of WAPPRIITA, one could view the regulation-making authority proposed in Bill C-68 as being similar to that, assuming that the appropriate regulations were made.

Mr. Gord Johns: I'll definitely go to the jurisdictional piece in a minute.

You talked about the 1990s. A licence for live capture hasn't been issued since 1992. Is the reason for this that live captures are cruel? Is that what the department has found?

• (1655)

Mr. Adam Burns: I'm not aware of the rationale for the policy.

Mr. Gord Johns: In terms of the jurisdictional piece, can you confirm that animal cruelty in the context of captive marine mammals involves concurrent areas of jurisdiction of private property as provincial and animal cruelty as federal?

Ms. Joanne Klineberg: Can you repeat that question?

Mr. Gord Johns: Sure.

In terms of the context of captive marine mammals being under concurrent areas of jurisdiction, with the private property being under provincial and animal cruelty being under federal, if Parliament finds that cetacean captivity is cruel, can you confirm that the federal law is constitutionally valid and will prevail?

Ms. Joanne Klineberg: Right.

What I can tell you is that if you find that there is a sound scientific basis for concluding that it is inherently harmful and cruel to the animals to keep them in captivity, that's probably a sufficient basis to ground a federal criminal offence. At the same time, the same type of action is subject to provincial animal welfare laws, which do find their home in property and civil rights in the province.

So, yes, there is concurrent jurisdiction.

Mr. Gord Johns: Okay.

Can you confirm that if Bill S-203 doesn't pass that the breeding and trading of live cetaceans will continue to be lawful in Canada?

Ms. Joanne Klineberg: From what I understand, Marineland is the one facility where breeding takes place. In Ontario, in 2015, the legislature made amendments to their animal welfare legislation that specifically prohibited the breeding of orcas, which is one type of whale. They put in place a number of other regulations setting out standards of care for other marine mammals, including cetaceans.

So, yes, if Bill S-203 does not pass, there will be a ban. There is a ban already in Ontario with respect to the breeding of orcas but not other whales.

Mr. Gord Johns: We know that Marineland argued that Bill S-203 will criminalize the births of beluga calves, separate from orcas that are currently in gestation. We've heard a clarification from Senator Sinclair that the law is not intended to apply retroactively. It's consistent with the bill's purpose of a phase-out and it's consistent with the charter's prevention of retroactive criminal law.

Can you confirm Senator Sinclair's interpretation as a valid interpretation and now clarify it in our Hansard, should the courts require that?

Ms. Joanne Klineberg: I don't think you would have to look at it as a question of retroactivity or retrospectivity. What the criminal law is always trying to do is prohibit human beings from undertaking certain actions. If there are beluga whales that are already pregnant by virtue of the human action of handlers and other people at Marineland, that's activity that has already happened.

What will be criminalized from the coming into force are human actions that seek on purpose to facilitate the breeding, not the birthing. The birthing of a baby beluga by its mother is not breeding or impregnating, through the criminal law lens. The criminal law is focused on what human beings are doing.

Mr. Gord Johns: Okay. Thanks.

Senator Sinclair talked about the intention required for the breeding offences...recklessness. If there is standard care to prevent pregnancies, in terms of the recklessness...being breached...the offence...?

Can you confirm that the interpretation is consistent with the bill's purpose of phasing out cetacean captivity, subject to any exceptions in the bill?

Ms. Joanne Klineberg: It definitely seems apparent that the way the legislation is drafted, from a criminal law point of view, it aims to prohibit breeding, save for that one exception where it's done for scientific purposes and is authorized by the province. To be honest, we don't have any precedents in the Criminal Code for criminal offences around breeding animals. I couldn't say with any sort of

certainty how that would be interpreted in terms of what level of intention would be required. But on general criminal law principles, one would think it would have to be proved that the managers at the facility were deliberately or intentionally seeking to have the whales come together to do what they do.

● (1700)

Mr. Gord Johns: Can you confirm then that it's under Parliament's authority to prohibit the breeding of cetaceans, their live capture, and their import and export, subject to the bill's exceptions?

Ms. Joanne Klineberg: Yes, again I think if the fundamental premise is that the breeding is being prohibited because all the whales born in captivity will face an inherently cruel life, then it would likely be constitutionally sound under Parliament's criminal law jurisdiction.

Mr. Gord Johns: Thank you.

The Chair: Before I go to the government side I'd like to recognize the presence of the Honourable Rob Nicholson from the beautiful riding of Niagara Falls. Welcome to the committee, sir.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much.

The Chair: Now to the government side, to Mr. Finnigan, for seven minutes or less, please.

Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

During the hearings a representative of DFO indicted that Canada's three oceans have somewhere around 60 different species of cetaceans and 18 of them are considered at risk, one way or another. Some have suggested that this bill will need to keep some of the species in captivity due to their endangered status to breed them or to eventually return them to their natural habitat.

Would you agree that we can do that to protect those species? Will that be prohibited with this bill?

Ms. Joanne Klineberg: I can just repeat that breeding and impregnating cetaceans would be prohibited under the amendments to the Criminal Code but there is an exception when a licence has been issued by the provincial lieutenant governor in council.

Mr. Pat Finnigan: If you have that special licence would it be criminal to have visitors, students, visit these locations where you could observe them? Would that also be permitted under the law?

Ms. Joanne Klineberg: Beyond possessing the animals already in captivity that would be grandfathered, the other offence that is provided for in the bill is the one we talked about a moment ago, which is a very long description of promoting, arranging, conducting, assisting at exhibitions or displays during which captive cetaceans are used for performance for entertainment. Everything would come down to the way that was interpreted, but I will leave to you to imagine what you think "performance for entertainment" would mean.

Mr. Pat Finnigan: Okay, that's a bit vague but hopefully eventually it will be cleared up.

Ms. Joanne Klineberg: They are fairly specific words. It is not so broad—when you read that in connection with it being an offence to just have custody or control, you can see quite a dramatic difference between what's described in the offence relating to performances for entertainment versus just the mere fact of having it.

Mr. Pat Finnigan: Another thing that would need to be clarified for me is clause 4 of Bill S-203 to prohibit the importation to Canada of living cetaceans as well as cetacean tissue or embryos, subject to a special permit. Apparently the English text of the clause refers to permits issued pursuant to proposed subsection 10(1.1) of WAPPRIITA while the French version of the text is silent on the type of importation permit required. That sounds very odd. I wouldn't know of any other piece of legislation in which the French version would be different from the English version.

Would you care to comment on that? Why is that?

Ms. Carolina Caceres: I am not completely sure about the two clauses you are referencing. I haven't done a comparison of the English to the French so I don't have a response for you on that.

Mr. Pat Finnigan: Do you think we should clarify that?

Ms. Carolina Caceres: It would be important to make sure that the intent in both the English and the French is the same.

• (1705)

Mr. Pat Finnigan: Thank you.

Where is Canada compared to the rest of the world as far as legislating on animals in captivity, especially in developed countries? Where do we lie? Is this legislation going to be a world leader, or are we just catching up?

Mr. Adam Burns: I can't speak to international comparisons around provisions related to wild capture. I don't know if my colleague can speak to Criminal Code provisions.

Ms. Joanne Klineberg: I can't other than to say that, in reading through some of the speeches given at second reading, I seem to recall reference being made to some other countries that have bans on keeping cetaceans in captivity, but off the top of my head, I couldn't tell you which they are.

Mr. Pat Finnigan: Have we over the years, with all the marinelands of the world, in Canada and the U.S. especially, benefited science, especially learning behaviour? Have we benefited and have the cetaceans benefited? Do you know if that's the case? Has there been any benefit, in other words, from what has been done by all those years of captivity?

Mr. Adam Burns: I can't speak specifically to whether scientific research conducted at one of those particular facilities you've referenced has contributed anything, but I'm not on the science side of our department.

Mr. Pat Finnigan: Apparently the Vancouver Aquarium is going to appear today, and I know they have concern regarding the Criminal Code aspect of the bill making it more difficult to do their research.

Would you have any comments on how that could impact their programs?

Ms. Joanne Klineberg: No. I'm only able to say that, from a federal criminal law point of view, if Bill S-203 is not enacted, there would not be a requirement under federal law for the aquarium to obtain a licence from the provincial government in order to be able to engage in scientific research, which is something that they would be required to do after this bill, if it is enacted. The only provision of the Criminal Code amendments that I see affecting scientific research is the requirement to obtain a licence.

The Chair: Thanks, Mr. Finnigan, that's perfect timing.

Now to the Conservative side, we have Mr. Arnold for five minutes or less, please.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

Thank you for being here today. Unfortunately, we've only got you for an hour. The Senate had three years on this bill, and we get three hours, so we're trying to cram a whole lot of stuff into one short day here.

One thing concerns me, and the entire paragraph has been mentioned a number of times, so I won't read the whole paragraph, but it's in proposed subsection 445.2(4). It deals with an exception and who would be excepted.

Every one commits an offence who promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition

The word I want to focus on is “promotes”.

The question has been asked: If someone goes outside the country and views a whale or dolphin show, and then comes back and puts it on their Facebook page, can you unequivocally say that that would not be considered as promoting that type of an event? Unequivocally?

Ms. Joanne Klineberg: I can get pretty close to unequivocal on this.

Mr. Mel Arnold: But you can't say unequivocally.

Ms. Joanne Klineberg: Again, from a criminal law point of view, when we have offences that have a series of different action verbs in them, you want to look at all of them in the same context and make sure that any interpretation you're giving to one is consistent with the whole.

When I look at the other words, “arranges, conducts, assists in, receives money for”, that tells me that this offence is targeting the individuals who are putting on the display. It doesn't target the individuals who are going to witness the display.

Mr. Mel Arnold: Okay, so I'll go back again to the word “promotes”. In Canada, we have travel companies and travel agents who sell packages to U.S. destinations and to foreign destinations. Part of that packaging and promotion is dolphin shows.

Would they be breaking the law if they promoted those activities in Canada? As I see it in this legislation, they would.

•(1710)

Ms. Joanne Klineberg: It's a sophisticated little problem of criminal law when part of a criminal offence looks like it's taking place in Canada, and another part looks like it might be taking place in another country.

The scenario you're describing involves someone in Canada who's paying for promotional material and advertising, but what they're advertising is for an activity that's going to take place in another country where it may be perfectly legal, so there's a combination of sort of domestic and foreign things happening.

There isn't necessarily a perfectly clear criminal answer on that, except I do feel quite confident in saying that the likelihood of there being a prosecution is incredibly low for something like that.

Mr. Mel Arnold: Then it would take a court case and a judge's decision to save it. No one's going to be charged.

Ms. Joanne Klineberg: It's because part of what constitutes the crime might be happening in Canada and another part might be happening abroad.

Mr. Mel Arnold: It's the promotion. That's why I was focused on the word "promotes" that's in the bill, since the promotion would be taking place in Canada. It is taking place in Canada. We brought up websites, as we were sitting here. The promotion is taking place in Canada and "promotes" is in the bill. Should there be an amendment to remove that word?

Ms. Joanne Klineberg: That will be your decision. I can only tell you what the possible legal outcome of such interpretations might be.

Mr. Mel Arnold: It would take a court case and a legal decision to clarify that?

Ms. Joanne Klineberg: If there were ever to be a prosecution, yes.

Mr. Mel Arnold: Or an attempted prosecution.

Ms. Joanne Klineberg: Right.

Mr. Mel Arnold: There could easily be a court case, though.

Ms. Joanne Klineberg: In my experience, I would consider it very unlikely.

Mr. Mel Arnold: Okay.

I'll move on to another subject. Where's the line drawn between what animals can be held in captivity and what animals can't be held in captivity? What are the criteria?

Ms. Joanne Klineberg: As a matter of federal criminal law, the criteria is what Parliament, in its wisdom, decides they should be. Scientifically, that might be a question better asked to the scientists, in terms of what level of scientific confidence can we have that being in captivity is sort of inherently harmful to the well-being of particular types of animals. That's more of a scientific question.

Mr. Mel Arnold: Is there no definition of it in any of the law?

The Chair: Thank you, Mr. Arnold. Your time has expired.

Now, we're back to the government side for five minutes or less.

Go ahead, Mr. Morrissey.

Mr. Robert Morrissey: Thank you, Chair.

To DFO, the Vancouver Aquarium will be appearing later today. Can you briefly address the work that DFO has been doing with that aquarium?

Mr. Adam Burns: I think there are a number of interactions that in particular our Pacific region has with the Vancouver Aquarium. One of the things that I can highlight is that they are a partner of ours in a program that is within my area of responsibility related to marine mammal response programs, so they do assist the department in terms of marine mammals in distress and going out assisting with the response on those animals.

Certainly, the folks from the aquarium would be able to speak in more detail to some of the other interactions they would have with DFO, in terms of DFO science and what have you, but that is one area that I can highlight.

Mr. Robert Morrissey: Thank you.

I want to go to Ms. Klineberg. Should there be concerns regarding the Criminal Code aspect of the bill, as it relates to the ability to do research work?

Ms. Joanne Klineberg: I think from a criminal law point of view, the only answer I can give to that question is that, as drafted, what the legislation seems to do is, in respect of cetaceans, to require that if there is going to be scientific research done, that a licence has to be obtained from the provincial government.

•(1715)

Mr. Robert Morrissey: Then it would not impede or impose on the ability to do research.

Ms. Joanne Klineberg: I think ultimately that would come down to what sorts of mechanisms each province would put in place, in order to assess whether or not—

Mr. Robert Morrissey: The bill itself would not?

Ms. Joanne Klineberg: Right. Just the requirement to obtain the licence.

Mr. Robert Morrissey: I have a general question because a lot of discussion has been debated for some time. There appears to be a strong consensus-building within the country concerning whether we should continue to keep the cetaceans in captivity for this particular benefit, which is public performance-driven. If the bill is passed, would cetaceans be better protected as a result of the bill, even with some of its concerns, than no bill?

Ms. Joanne Klineberg: I think I can only respond by pointing to what the law will prohibit.

Mr. Robert Morrissey: That's what I'm asking.

Ms. Joanne Klineberg: Right. The law—in particular the Criminal Code amendment—grandfathers all of the cetaceans that are currently in captivity. From the day that the legislation would come into force if it's adopted, all of the cetaceans that are alive and in captivity will be allowed to be kept. Until they die naturally or authorization is given for them to be exported, that's where they will reside until they die.

Mr. Robert Morrissey: If you were approaching it from a negative perspective, the most negative perspective would be that you would be phasing this activity out. Correct?

Ms. Joanne Klineberg: That's my understanding of the way it gets described.

Mr. Robert Morrissey: At the same time, it would be preventing wild animals from coming into this type of environment?

Ms. Joanne Klineberg: As I understand it, the amendments to the Fisheries Act would prevent—

Mr. Robert Morrissey: I'm referring to this particular bill.

Ms. Joanne Klineberg: Right. Possibly the amendments to WAPRIITA would prevent new cetaceans from being imported into Canada, but I can allow my colleague to speak there.

The other relevant part of the Criminal Code amendments is the ban on the breeding, so that no new cetaceans could be born—

Mr. Robert Morrissey: As a result of this bill.

Ms. Joanne Klineberg: —as a result of the Criminal Code amendments.

Mr. Robert Morrissey: That would be positive.

Ms. Joanne Klineberg: Well, that would be for you to decide.

Mr. Robert Morrissey: That's all.

The Chair: Thank you Mr. Morrissey.

We have a little over two minutes left. We'll go to the Conservative side. Mr. Calkins, you have three minutes.

Mr. Blaine Calkins: I'm never terribly concerned about the blatantly obvious—well, the intended—consequences of legislation. I don't mean “blatant” in a pejorative way. The problem that I have as a legislator is always the unintended consequences of legislation and what those might actually be.

I have a question for you as the department officials. Would there be a way to achieve the result of ending the captivity of cetaceans without S-203? Certainly, every one of those organizations, like the Vancouver Aquarium and Marineland—and I'm not advocating for this—must get permits somewhere from somebody in order to continue on with their operations. Why would it not be a matter of just revoking those in perpetuity, instead of having to create legislation that I'm afraid will eventually lead to the end of rodeos, captive breeding programs and a whole host of potentially beneficial things?

I feel like we're swatting a fly with a sledgehammer here.

Mr. Adam Burns: As mentioned earlier, I think some of the amendments the House has passed in Bill C-68 will accomplish—if you will permit me to say it—probably two-thirds of the objectives. The amendments in C-68 would prohibit the minister from issuing a permit to capture a whale within Canadian fisheries waters for the purpose of public display, as well as allow the government to create an import prohibition for new whales to be brought in. It would leave the captive breeding piece, on which the province of Ontario has already exercised jurisdiction in relation to orcas.

Mr. Blaine Calkins: Maybe, Mr. Burns, you can help me. I, as an Albertan, cannot possess any wild species of fish in an aquarium in my house without a permit to do so. I can have tropical fish. I can't

do anything with wildlife. I can't keep a deer alive in my yard. I can't keep an elk alive. I'm not allowed to possess any wild animal unless I have a permit that allows me to do so. Surely to goodness Marineland and the Vancouver Aquarium have permits allowing them to do so. If so, and if this is a problem, why can't we simply revoke the permits over time, if that's what the end goal is of whatever we're trying to achieve here? Why do we need legislation and Criminal Code things that are going to potentially put travel agents in jail for selling tickets to SeaWorld without actually knowing it? That's the way the legislation reads. Everyone commits an offence who promotes or arranges—well, selling a ticket to somebody for SeaWorld, if you're....

I can go right now to the Alberta Motor Association in my home province and buy tickets to SeaWorld. According to me, they're conducting and receiving money. They would receive a commission for the sale of that. They're arranging my ability to go see captive whales. I know we talked about this before, but why are we using such a heavy-handed approach? I don't understand this.

That's just my comment. I'm going to go back to one of the questions I have.

The animal that's currently in captivity in Vancouver.... When the Department of Fisheries and Oceans is alerted to the presence of an animal in distress, what kinds of facilities do we have as a government? What kinds of facilities are available to us to provide sanctuary or safe harbour until we have the ability to actually nurture or nurse the animal back to health? Where would we do it if the Vancouver Aquarium had never been built in the first place? Are there other facilities? If we find something in the southern resident killer whale population—a whale that is in distress—how would we help it if we needed to take it outside of the wild environment? Would we just let nature take its course?

● (1720)

Mr. Adam Burns: There are very limited.... Vancouver Aquarium would be the key facility that immediately comes to mind that—

Mr. Blaine Calkins: But the ethics behind this bill would suggest that the Vancouver Aquarium should never have been built in the first place, correct?

Mr. Adam Burns: I can't speak to that.

Mr. Blaine Calkins: I think that's the point. Anyway, I think I've made my point. I thank you for coming here and trying to help me through what is, in my opinion, a well-intentioned but extremely clumsy piece of legislation.

The Chair: Thank you, Mr. Calkins.

Our time is now up for this particular portion of today's committee meeting. Before I suspend, I would like to apologize and recognize at the same time the presence of the Hon. Larry Bagnell, MP for Yukon. I missed doing that earlier. I do apologize for that.

We will suspend now for a couple of minutes just to change out for the next hour of witnesses.

Thank you to our witnesses.

• (1720)

(Pause)

• (1725)

The Chair: Welcome, everybody, to our final hour on the study today on this particular motion.

I welcome all our guests.

By video conference, we have Dr. Hal Whitehead, professor, Biology Department, Dalhousie University.

As well by video conference, we have Dr. Laura Graham, director, WRG Conservation Foundation.

Here in person, from Ocean Wise, we have Clinton Wright, executive vice-president and chief operating officer, aquariums; and Dr. Martin Haulena, chief veterinarian.

Here from Marineland of Canada Inc., we have Mr. Andrew Burns, legal counsel.

We're going to start off with our seven-minute presentations by video conference.

We'll go to Dr. Whitehead first, for seven minutes or less. Go ahead, please.

Dr. Hal Whitehead (Professor, Biology Department, Dalhousie University, As an Individual): Thank you.

My name is Hal Whitehead. I'm a professor at Dalhousie University and co-chair for marine mammals of the Committee on the Status of Endangered Wildlife in Canada, COSEWIC. I have been studying whales and dolphins in the wild since 1974, with a particular focus on their behaviour, ecology, social structure, culture, populations and conservation.

Fundamentally, scientists study whales and dolphins to understand their biology and to promote their conservation. Much of this research is done at sea, often with technologies such as underwater microphones, tags and drones. Usually this research is observational, but sometimes scientists manage manipulative experiments at sea. There is also research on whales and dolphins in captivity. Much more of this research is experimental.

Experimental science tends to be more definitive than observations, but set against this is the unnatural setting of captivity, which often makes interpretation of the results problematic. This is particularly the case for whales and dolphins, as the captive environment is especially unnatural. Captive whales and dolphins live in a space that is less than a millionth—and in the case of killer whales, less than a billionth—of the area of their natural home ranges. Rather than facing a wide range of living prey, they are typically fed dead fish.

These are extremely acoustic animals. That's how they sense their world and how they communicate. Concrete tanks are debilitating echo chambers. Whales and dolphins are also extremely social, and by some measures, more social than us. The captive social environment is utterly different from their social life in the wild. These, and other factors, make much of the research on captive whales and dolphins problematic, and have led most scientists not

connected to the captivity industry, some philosophers, and much of the Canadian public to consider the captivity industry unethical.

Research in captivity has given us lots of interesting insights into the nature of the animals, especially their physiologies and cognition, although there is continuing uncertainty about how these results refer to animals in the wild. Most important captive results come from dedicated research facilities, such as those at the United States Navy and the University of Hawai'i, not display facilities. Ethical standards for scientific research are tightening, and research that was standard is no longer considered ethical. Studies of animals in captivity provide little of value for conservation of wild animals. They tend to ask the wrong questions about the wrong species.

As examples, I'll consider reports on the status of two emblematic Canadian whale species, members of which are held in captivity. In the 2015 COSEWIC status report on the endangered St. Lawrence belugas, about 1.4% of the main text of the report refers to captive animals. This is made up of one paragraph plus one sentence summarizing information on belugas in captivity and one reference to captive research in determining age of sexual maturity. There are seven references to wild studies for the same result. In the DFO recovery strategy for this population, reference to captive belugas is even less.

In the 2008 COSEWIC status report on the killer whale, including the endangered southern resident population, about 2% of the main text refers to captive animals. There is one sentence on mating seasonality and one sentence referring to the gestation period drawn from captive studies. Of the seven citations for a statement on the effects of noise, one was from captive studies, six from the wild. All other references to captivity in the report concern the negative effects of removals from wild populations for oceanaria.

In the 2011 DFO recovery strategy for the southern resident killer whales, there is one paragraph referring to diseases in captivity.

• (1730)

Thus, while studies of whales in captivity have given interesting and sometimes academically useful information, their contribution to the conservation of Canadian species has been virtually zero or negative if the effects of wild captures are considered.

Moving beyond Canada, captivity has been considered for the two most desperately and critically endangered of cetaceans: the Yangtze River dolphins, or baiji, and the Gulf of California harbour porpoise, or vaquita. As a last-ditch effort, plans were made to round up the last few individuals and keep them away from the harm that we humans are doing them in the wild, but for neither species was this successful. One is extinct; the other almost certainly doomed to extinction.

Past research on captive animals is being replaced by new techniques in the wild, including experiments. For instance, controlled exposure experiments on wild animals have given major advances in how we understand the effects of underwater noise on whales. If this bill passes, the cetaceans currently in captivity will still be available for research. Additionally, some animals will enter captivity for rehabilitation, and there may be rescued animals in semi-captive sanctuaries, both opportunities for gaining knowledge. In addition, computer modelling is also replacing some captive animal studies.

In summary, if captive displays of whales and dolphins end, our ability to conserve the animals in the wild will be virtually unaffected. And although studies of captive whales and dolphins have informed us about the species and their biology, much or all of this information stream can now be replaced.

Thank you.

•(1735)

The Chair: Thank you, Dr. Whitehead.

We will now go to Dr. Laura Graham, for seven minutes or less, please.

Dr. Laura Graham (Director, WRG Conservation Foundation, As an Individual): I would like to thank the committee for this opportunity to voice my concerns about Bill S-203, to ban cetaceans in captivity.

Specifically, I want to make sure the committee is well informed on the critical role that scientific research on cetaceans in captivity plays in the advancement of the management and conservation of captive and wild cetacean populations.

My background is in wildlife physiology and captive breeding of endangered species. That is the area on which I will focus. One of the areas that I am an expert in is developing non-invasive hormone techniques to use in wildlife to assess reproduction and welfare. I collaborate with various zoos and aquariums with their captive population to develop and validate these techniques, then we can apply them to the captive population. We can also adapt them for use in wild populations. Think of home pregnancy tests for women, where we just measure the hormone in the urine. In this case, we're collecting urine or feces from the species in a non-invasive way.

I want to point out a couple of examples where this is critical to advancing our knowledge about cetaceous species, including our critically endangered cetaceous species.

Article one, which I have provided you, is an example of these techniques that have been developed in dolphins. These non-invasive hormone techniques, which have been developed for some cetaceous species in aquariums, in collaboration with aquariums, have provided some critical information.

This includes critical information on our own southern resident pods of orca on the west coast that are listed as endangered under the Species at Risk Act. They are the most polluted mammal on the planet and for several years have been declining in numbers, as you all know.

Various measures have been taken to reverse the population decline, including reduced tourist activity based on the unsubstantiated assumption that tourism-associated stress is negatively impacting their recovery. The decline has continued. Everybody's seen the viral picture of the mother carrying her dead calf around for weeks.

A colleague of mine has used our non-invasive hormone techniques that have been developed in captive animals to study this particular population of orca. His study has determined that the female orcas are actually getting pregnant, but they are losing their calves. They are losing the fetus or their newborn to malnutrition. That is not something that you can get just from observational studies.

As far as the tourist boats go, the study has indicated that the stress hormones of this particular population actually are at their lowest during the peak tourism season. This is in article two, which I have provided for you, that was published by Sam Wasser in 2017.

These orcas are getting pregnant, but they are losing their fetus or newborn because of malnutrition. Using the information that came from this study, we are now able to pinpoint the most important threat to the survival of this orca population: the declining salmon stocks. I want to emphasize that we would not have this technique to use on this critically endangered population without having captive orcas to study the hormone patterns for the species.

Another example would be the St. Lawrence beluga. Again, like the orcas, its population is declining for unknown reasons, although various measures have been undertaken to try to attempt to reverse this decline, including reducing tourism activity. It would be possible for us to do a very similar study to what was done with the southern resident pod of the orca; however, we would need to have a captive breeding population of belugas to validate the techniques. This proposed legislation would obviously prevent us from carrying out this research.

I have focused just on two examples, because they're of immediate Canadian concern and that's my research area of expertise.

•(1740)

The previous speaker was also talking about some of the field research, so I want to remind everybody that much of the techniques used for that field research were developed and validated on captive populations under captive conditions.

Indeed, the vast majority of what we know about cetacean biology is based on research in captive populations and is critical for rescuing cetaceans in dire straits. I'm glad the Vancouver Aquarium is going to be here because they can talk about their contribution to the conservation and management of wild cetaceans and how their research has been critical to that. I have provided the open letter from the list of scientists, in defence of the research done by Vancouver Aquarium when they were attacked by the anti-captivity people, and I strongly encourage you to read it.

A great deal has been suggested about the reduced welfare of cetaceans in captivity and there's no doubt some institutions should definitely be closed. However, in modern accredited zoos and aquariums, great strides have been made to maximize the welfare of animals in their care using science. For example, in the proposed legislation, there's a ban on cetaceans performing for the public under the assumption that it's stressful, yet research, which is article three that I have provided to you, has indicated that dolphins do not act stressed in anticipation of training and performance.

Another investigation comparing wild dolphins to captive dolphins actually indicated that captive dolphins were healthier than the wild dolphins. That is in article four, which I have also provided to you.

In my extensive experience, accredited zoos and aquaria are far more eagerly pursuing research into animal welfare than most other animal industries, including the food and companion animal industries. Another example of the research would be article five.

The CCAC has developed guidelines for the care and use of marine mammals that could be implemented as regulations to ensure that the highest standards of welfare are met in captive cetaceans and allow science to continue to guide the evolution of these standards. Indeed, colleagues of mine in the U.S. are currently doing a scientific study involving more than 300 captive cetaceans held in seven nations to determine the factors that are critical to improved cetacean welfare, with the aim of improving it around the world.

Vancouver Aquarium was going to participate in this international study until the Vancouver parks board banned them from housing beluga, so Canada will not be part of this international effort.

In conclusion, I want to dedicate my testimony to the critically endangered cetacean species I already mentioned, the vaquita. There are fewer than 10 left and the population is expected to become extinct in a few weeks, as the fishing season peaks. We could have saved them. If we had started years ago when the population started to crash, we could have learned more about them and we could have set up a captive population. We could have saved them from extinction, but now they're going to be gone forever and that is shameful and unforgivable.

Thank you.

The Chair: Thank you, Dr. Graham.

We'll now go to Ocean Wise and Mr. Wright.

Mr. Clinton Wright (Executive Vice-President and Chief Operating Officer, Aquariums, Ocean Wise): Thank you, Mr. Chair.

Good evening, honourable members of the committee.

I am Clint Wright, chief operating officer of Ocean Wise, which includes the Vancouver Aquarium.

Thank you for inviting me. I appreciate the opportunity to comment on Bill S-203.

I'd like to acknowledge that we are on the ancestral lands of the Algonquin people.

I don't think that I need to tell you, the members of the Standing Committee on Fisheries and Oceans, that there are many species of cetaceans in trouble in Canada and around the world. When it comes to the state of our oceans, we're racing against time.

When the Vancouver Aquarium appeared before the Senate committee to discuss this legislation in 2017, we talked about our efforts to win that race. We've been at the forefront of conservation-based research in the Pacific, the Arctic and the Atlantic since 1956. Our collective body of work has contributed to the protection and recovery of wild cetacean populations in Canada through input into significant policies, regulations and best practices.

Central to the conversation, as it was then, is our unwavering commitment to animal welfare. It is the reason that I, as a marine biologist, have dedicated my life to studying and safeguarding our vulnerable ecosystems.

In the 62-year history of the Vancouver Aquarium, a lot has been gained and a lot has changed. We lead one of the longest-running killer whale research studies in the world. The expertise we've gained over five decades of working directly with cetaceans has enabled us to be nimble in providing support to Fisheries and Oceans Canada on emergent cetacean rescues.

Having connected more than 45 million people to cetaceans so that they would take steps to protect what they've learned to love, the Vancouver Aquarium made a decision last year to no longer display cetaceans. It has also been nearly 30 years since the last wild-caught cetacean was brought to Vancouver, a practice that no longer exists at accredited facilities in North America.

This brings me back to the topic of Bill S-203. As it is currently worded, the legislation will have unintended negative consequences and prevent us from doing our best for sick, injured and endangered whales, dolphins and porpoises in Canada.

My concerns are threefold.

First, the provincial approval requirement from the lieutenant governor and other provincial bodies adds a layer of complexity in the event of an emergent cetacean rescue, when DFO calls on the Vancouver Aquarium marine mammal rescue centre for support to save a stranded, injured or ill cetacean. Time is of the essence in these scenarios, and often these rescues take place in front of the public. We've learned through experience that added delays are problematic.

The same is true for acquiring provincial approval to conduct research during a rescue as part of the veterinary care and rehabilitation. Again, it adds another layer of complexity, delaying urgent care to a very sick animal.

Second—also on this point—to the best of our knowledge, there is no provincial legislation in B.C., hence a provincial cabinet would not be able to provide authorization or delegate authority. As the federal department that oversees ocean protection and cetacean welfare, our partners at DFO are likely the best ones to speak to the federal permit process.

Third—and perhaps even more troubling in my view—the bill does not adequately provide for the protection and care of endangered species and populations. As in the case of J50 and the southern resident killer whales, which Dr. Haulena will speak to in greater detail, or the belugas in the St. Lawrence estuary, extraordinary measures to save species may soon be needed.

I would like to see the bill amended to include an exception for *ex situ* conservation programs.

It's impossible to predict what the future will hold, but based on recent history, there is a growing need for this work. I urge this committee to consider amendments to Bill S-203 so that this critical work can continue now and into the future.

Thank you.

• (1745)

The Chair: Thank you, Mr. Wright.

We'll now go to Mr. Burns from Marineland of Canada Inc.

You have seven minutes or less, please.

Mr. Andrew Burns (Legal Counsel, Marineland of Canada Inc.): Good evening. On behalf of Marineland I will focus on three issues of concern, for the committee's consideration.

In its present form, this bill violates the Charter of Rights and is unconstitutional.

First, Bill S-203 does not provide for a proclamation date. It becomes law immediately after royal assent, and many otherwise lawful activities will immediately become criminal offences.

Specifically, proposed paragraph 445.2(2)(a) makes it a criminal offence to own, have the custody of or control a cetacean that is kept in captivity. The bill does include an exception in relation to cetaceans that are kept in captivity at the coming into force of proposed paragraph 445.2(2)(a) and that remain continuously in captivity thereafter. The offence provision therefore does not apply to whales presently alive at Marineland.

The bill goes on to create another exception, permitting the holding of cetaceans, subject to the issuance of a licence issued by the province in which the cetaceans are held. The bill does not, however, provide any period of time for a licensing regime to be implemented prior to the Criminal Code offence being created upon royal assent.

These provisions of the bill give rise to a serious practical problem arising solely from the natural reproductive cycle of the beluga whales living at Marineland. This issue was clearly and directly raised in my testimony to the Senate committee considering this bill on May 16, 2017, when I stated:

But if a beluga whale is pregnant prior to the date of the bill coming into effect and gives birth after the bill comes into effect, the birth of that beluga whale triggers the commission of a criminal offence.

“Birth” is the operative word.

With respect, this is not about whether proposed paragraph 445.2(2)(b), prohibiting breeding prior to the law coming into effect, constitutes a crime after; it is an issue under proposed paragraph

445.2(2)(a) as to when Marineland comes into possession, ownership or control of a new baby beluga whale.

We are not arguing, as is suggested by Senator Moore or the DOJ lawyer, that somehow proposed paragraph 445.2(2)(b), concerning breeding, is relevant. What we are saying is that proposed paragraph 445.2(2)(a) is relevant. Marineland comes into possession, ownership or control of a new baby beluga whale at birth—presumably—after royal assent, assuming the bill is passed into law this spring.

The Supreme Court of Canada and Criminal Code subsection 223(1) address directly and clearly this issue in relation to the birth of human children. Under subsection 223(1), a child becomes a human being within the meaning of the Criminal Code when it has completely proceeded, in a living state, from the body of its mother.

The birth of a beluga whale will be interpreted no differently. To suggest otherwise is to state that beluga fetuses have greater rights under the law than human fetuses. A new baby beluga whale is a new and separate entity on the date of its live birth, not one day before.

It is acknowledged by the DOJ lawyer that this act provides that no new whales will be allowed to be born following royal assent to this bill.

• (1750)

Consequently, when the currently pregnant beluga whales give birth in 2019 and 2020, Marineland and, arguably, all the staff and independent marine mammal veterinarians who aid in the deliveries and care for newborn beluga whales will unavoidably and immediately be committing a criminal offence. This cannot be otherwise avoided by Marineland. The gestation period for whales is approximately 16 months. Whales are already pregnant. Pregnant mothers cannot be moved or disturbed without risking their lives. They certainly cannot be transported to another jurisdiction without killing them.

With respect to the “breeding” provision prohibition under proposed paragraph 445.2(2)(b), the whales are self-organized at Marineland into family groups—more than 50 whales. There are no free pools. Assuming the bill passes, Marineland is being told to tear family groups apart and separate mothers, fathers and children in 24 hours. That is impossible, and no one wants that to happen.

Surely, it was never the intention of the drafters of this bill that Marineland would be rendered totally incapable of complying with the Criminal Code, automatically becoming guilty of Criminal Code offences and left in continuous possession of illegal whales born in 2019 and 2020. It also cannot be suggested that the drafters of this bill intended to create a situation that forces the attempted abortion of baby beluga whales or the euthanasia of pregnant mothers as an alternative to criminal conviction.

We believe a simple, reasonable solution that will have no impact on the purpose or intent of the bill is to amend the bill to provide for a realistic proclamation date. However, if the bill is passed in its present form, it will create a statute which, by its terms, makes compliance impossible and the consequence a criminal conviction. Such a statute violates the principles of natural justice and violates section 7 of the charter. The bill, in its present form, is unconstitutional.

The second issue, which, again, does not impact the stated purpose of the bill, arises as a consequence of the very broad wording of proposed subsection 445.2(4). The issue here is not Marineland's compliance but broad effects on average Canadians. The wording creates a criminal offence for everyone who takes part in a show that is purely for entertainment purposes. This includes swimming with dolphins. While this may not violate the Criminal Code when posted to Facebook by a Canadian who has swum with dolphins on vacation, it will demonstrate the violation of Canadian law and will certainly impact "good character" clauses in employment contracts in the academic sector, the public sector and other settings.

In addition, promoting or receiving money for such shows implicates every major airline in Canada that promotes resorts or swimming with dolphins. Travel agents who book these types of events will be receiving money for doing so, which is expressly prohibited. These offences occur in Canada. At least one major Canadian company owns Atlantis, Paradise Island, which operates under Bahamian law and offers swimming with dolphins. Receiving money from this will be criminal.

This appears to go well beyond the stated purpose of the bill, ending captivity of cetaceans in Canada.

• (1755)

The Chair: Mr. Burns, we've gone way over time.

Mr. Andrew Burns: I'm sorry.

The Chair: I'm going to have to cut you off there, unfortunately.

Hopefully, anything you haven't said will come out in the line of questioning; or, if you submit your written submission to the committee, we will certainly get it.

I want to go back and correct something as well. Through error, when I went to Mr. Wright for Ocean Wise, there was no indication of sharing time, but there was some time left. I understand Dr. Haulena is going to use that time. There are two minutes and 18 seconds left on that time, when you're ready, sir.

Dr. Martin Haulena (Chief Veterinarian, Ocean Wise): Thank you.

Good evening, everyone. Thank you for inviting me. I appreciate the opportunity to address Bill S-203.

I'm Dr. Martin Haulena. I'm head veterinarian at the Vancouver Aquarium, as well as at our national marine mammal rescue centre, both part of Ocean Wise. Ours is the only rescue centre in Canada able to rescue, rehabilitate and release marine mammals, including cetaceans, the taxonomic group of animals that includes all whales, dolphins and porpoises.

I'd like to use a recent example of our work to explain my concerns about Bill S-203 in its current form, and its potential impact on our efforts to save endangered whales in Canada. Last summer, I spent the better part of the month in the San Juan Islands, located between Vancouver Island and Washington state, taking part in a rescue effort for a small killer whale known as Scarlet, or J50, according to the naming system for killer whales, off the west coast.

J50 was four years old, a member of the critically endangered southern resident killer whale population. Based on her emaciated body condition, she was very sick. Veterinary intervention with free-ranging animals isn't something we ever take lightly, but time is running out for this group of whales. There are only 75 of them left, as has been mentioned a few times. Based on what we know about them and their environment, we understand that environmental threats, including pollution, underwater noise and lack of prey, are causing their decline. The Department of Fisheries and Oceans is also taking actions to address those issues, but for this population of whales, the time needed to reverse the impact of these threats—

The Chair: Excuse me. Dr. Haulena, I have to interrupt for a second. Lights are blinking, which means the bells are going for a vote. For us to continue beyond this point, I have to ask for the unanimous consent of the committee to continue on even till 6:15 p.m. That will allow everybody to get back in time.

Is everybody agreed?

Some hon. members: Agreed.

The Chair: Okay. You may continue.

• (1800)

Dr. Martin Haulena: I shall be quick. Thank you.

For the population of these whales, the time needed to reverse the impact of these threats might be too great. J50 was a young female, with her reproductive years still ahead of her. While the chances of saving her were slim, we believe these iconic killer whales are worth our very best effort. In extreme cases like this one, veterinary intervention or, should it become necessary for an endangered species or population, an ex situ conservation program, in which we take members of an endangered population into human care for protection, could be our last best hope.

J50 was not the first cetacean patient at the marine mammal rescue centre. Others range from Springer, the young whale rescued and returned to her home off the north coast of Vancouver Island in 2001, to harbour porpoises, dolphins and a false killer whale in 2014. In 2017, members of our team were asked to help return an endangered beluga whale to its natural range in the St. Lawrence estuary, after it became trapped in the New Brunswick river system.

With our oceans warming, prey becoming harder to find, and the impacts of industry and development increasing, there's little doubt that more marine mammals will need help in the future. In every case that we respond to, we work closely with, and under the authority of, DFO, or NOAA in the United States. In the case of J50, it was with both federal governments.

Our team also continues to build capacity to respond to marine mammals impacted in the event of an oil spill. In almost every one of the past nine years, we've joined research expeditions in the Arctic to gather data about narwhals and their rapidly warming environment, at the request of DFO.

These are just a few examples of how we are directly conserving species and improving welfare for wild cetaceans in Canada. It is important to note that we are the only not-for-profit team of first responders in the water, performing life-saving rescues when a cetacean is left stranded along our shorelines.

We've provided some suggested amendments to you. I hope you will consider them seriously. Thank you. I really do believe it's important to all of us here that we do the best we can for these incredible animals. I think we can all agree on that. I appreciate your time and consideration.

The Chair: Thank you for that, and thank you to all our presenters. We have approximately 14 minutes left before 6:15 p.m. Do we want to go with three fives? If we go with sevens, it's not going to—

Hon. Rob Nicholson: Let's go with three fives, Mr. Chair.

The Chair: Okay.

Is everybody in agreement with that?

Some hon. members: Agreed.

The Chair: Okay.

Mr. Hardie, for the Liberal side, you have five minutes or less, and I'll be very strict.

Mr. Ken Hardie: I'll just look up and down the line. Does anybody have a question from our side here? Just put your hands up or tug on my sleeve.

Mr. Burns, were you in the room for Senator Sinclair's testimony?

Mr. Andrew Burns: Yes, I was.

Mr. Ken Hardie: Did you get any comfort at all about some of the issues? You've raised issues that he responded to. He suggested that his reading of the legislation would not result in the kind of consequences that you've been talking about.

Mr. Andrew Burns: With respect, as I stated, I believe he misunderstood the argument we were making. He referred to the sub 3 section, when we were referring to the sub 2 section. I could also state —

Mr. Ken Hardie: Be very quick, sir, please.

Mr. Andrew Burns: This opinion is not just mine. The opinion has been reviewed by the former director of criminal prosecutions for the Province of Ontario, the top Crown for the Province of Ontario, who agrees with our view.

Mr. Ken Hardie: In short, could we say that this could likely end up at the Supreme Court of Canada?

Mr. Andrew Burns: Easily.

Mr. Ken Hardie: Thank you for that.

Dr. Graham, in earlier testimony we tried to make a distinction between a captive cetacean and one that may have been taken into custody for purposes of some form of remediation. Do you think that rather than taking an animal out of the wild and putting it into a confined area...? Let's discard the whole notion of being there for performance purposes because that, I don't think, really passes muster with a lot of people anymore. Do you think it's necessary, or could we actually, by confining an animal into a bay or something

like that, do what would be necessary, first of all to provide health and support and second to do some of the research that you were citing earlier?

Dr. Laura Graham: Yes, if you look at some of the institutions down in the U.S. like the U.S. Navy, which runs a marine mammal program, they have what is basically a pen in the ocean. When we're developing these techniques, we have to know, for example, everything they're doing every day so that we can correlate it back to the hormones that we're measuring. That cannot be done on free-ranging animals. Once we've developed the technique for this species, then, as I said, we can apply it to free-ranging animals.

● (1805)

Mr. Ken Hardie: If an animal were somewhat restricted in its movements, basically in a larger "natural" pen, if you like, as opposed to a concrete one, would that suffice?

Dr. Laura Graham: It should, as long as you understand everything the animal is doing.

Mr. Ken Hardie: How much more do we need to know about their physiology? We've had an opportunity and will continue to have opportunities for that kind of research, at least as far as belugas are concerned, thanks to the animals in Marineland. How much more do we need to know?

Dr. Laura Graham: As a scientist, I'm never happy.

Mr. Ken Hardie: Never, yes.

Dr. Laura Graham: Exactly, that's right.

I can't really answer that. We can't predict what's going to happen in the future. The hormone techniques I'm talking about are evolving. We started out with reproduction. Then we included stress hormones. Now we're evolving into things like thyroid function, which was part of the orca study. We're also looking for non-evasive indicators of positive welfare, not just negative welfare. It's a continually evolving field of research.

Mr. Ken Hardie: I'll leave it at that, Mr. Chair.

Do any of my colleagues have any questions?

No, then we'll turn it over.

The Chair: Thank you for that.

Now to the Conservative side, we have Mr. Nicholson, for five minutes or less.

Hon. Rob Nicholson: Mr. Chair, thank you very much.

Thank you all for your testimony here. What you had to say, Dr. Graham, was very significant with respect to the extinction of a particular species here because more effort wasn't made to do what we can to help them repopulate.

Mr. Burns, you said that if a beluga whale is pregnant and gives birth after the implementation of this bill, those who are there at Marineland and other places immediately face criminal charges.

If they postponed the enactment of this, how would that change? Don't these whales get pregnant on a regular basis?

Mr. Andrew Burns: Under the act, there's a requirement to cease breeding based on the scientific information we have. In order to separate such a large group of whales, which is extremely stressful, it will take a long period of time, particularly in the context of existing pregnancies. It could interfere with—if not kill—a pregnant mother to be separated from the balance of her family.

All that Marineland is saying is that, at this time, a reasonable proclamation date provides an opportunity to permit this to occur. We don't want it to occur.

Hon. Rob Nicholson: The gestation period is 16 months, you say?

Mr. Andrew Burns: It's 16 months, so we have whales that are currently pregnant and will give birth this year. We have whales that will give birth in 2020. While we separate, we may have some tail-end animals that become pregnant. It's very difficult to determine when they have become pregnant.

Hon. Rob Nicholson: The treatment of these animals is always foremost in everybody's mind. What you're saying is that if this bill gets passed, Marineland and others would have no choice but to start separating these families. How many years have some of these families been together?

Mr. Andrew Burns: Years, many years.

Hon. Rob Nicholson: You're saying that this bill here means that they'll have to be broken up and separated to make sure that—

A voice: It will cause stress.

Hon. Rob Nicholson: Yes, that's right.

Mr. Andrew Burns: It'll cause a huge amount of stress. This is not moving two or three or four whales; this is more than 50 whales. This is a very complex process that will require a great deal of oversight and a great deal of care. Whales, when they are separated, display a great deal of stress, and it has to be done very carefully.

Hon. Rob Nicholson: In your previous testimony, you said, "Marineland continues to evolve. It's committed to evolving." Could you please elaborate on that for us?

Mr. Andrew Burns: Yes. Many of the concerns raised by this bill appear to be around issues that are quite old. Marineland is one of the most heavily inspected and regulated institutions in the world. Not a single charge has been laid related to any of these issues raised by Ms. Visser or others—not a single charge. It evolves with the changing time, with new regulations, with new science. We're continuing to evolve positively with research programs, education programs and conservation programs.

• (1810)

Hon. Rob Nicholson: When you testified about this bill here, you said what a disaster it would be. You elaborated in a number of different ways on that.

The bill has been changed in some ways over the last couple of years or so. Does this alleviate any of your concerns?

Mr. Andrew Burns: Unfortunately it does not alleviate the specific concern that was raised in the Senate prior to these amendments that you're now considering. There was an opportunity for the Senate to address this specific issue two years ago, and it did

not do it. It is now in the hands of the House to attempt to avoid a clearly unconstitutional bill.

Hon. Rob Nicholson: Not only unconstitutional, but the implications of the Criminal Code and the possibility of charges that—

Mr. Andrew Burns: This is something we have considered carefully. As I said, we've obtained the advice of the former chief Crown for the Province of Ontario, the former director of criminal prosecution for Ontario, and what I have expressed he is in accord with. This is a situation we face as a practical matter that may be resolved, without affecting the overall purpose of the bill, by a proclamation date amendment.

Hon. Rob Nicholson: Well, I would hope, Mr. Chairman, that we could have that individual, that former prosecutor, testify. We've just started the testimony on this bill here, so that's—

The Chair: Your time is up.

Hon. Rob Nicholson: —one of the suggestions I'd like to make, because I don't think we're in any hurry to—

This is it? We only have one day?

The Chair: Mr. Johns is next, for five minutes or less, please.

Mr. Gord Johns: Thank you.

I'll start with Mr. Burns and I'll follow a little bit where Mr. Nicholson was going in terms of the belugas you have.

With your indiscriminate breeding program and your limited space—you've identified that you have 50 or so belugas—how do you prevent inbreeding, and how do you ensure that births don't outstrip your capacity to house these whales responsibly?

Mr. Andrew Burns: Well, first of all there isn't indiscriminate breeding. Secondly, there is a well-developed veterinary program. There are three veterinarians who review the condition, health and care of the animals every single day. There are a dozen veterinary specialists who are available to provide individual advice. Collectively, they monitor breeding issues and ensure that those issues don't arise.

Mr. Gord Johns: [*Inaudible—Editor*] ...capacity, what do you—?

Mr. Andrew Burns: Regarding capacity, Marineland has the largest pools housing whales in the world; we are aware of capacity issues. Those scientists, those veterinarians, advise the animal care committee, and their advice regarding whether or not they have appropriate space is adhered to strictly by Marineland.

Mr. Gord Johns: I think we heard about appropriate space from another witness earlier.

You're no longer accredited by the Canadian association of zoos and aquariums. Is that true?

Mr. Andrew Burns: The reason for that is that Marineland was undergoing an expansion. As a consequence, we have to do a re-accreditation following completion of the work. I can advise the committee that we have CAZA coming within the next month to do a pre-inspection, and we will then be going through the full inspection—as is normal—this spring.

Mr. Gord Johns: In the Senate, the late Mr. Holer told the committee that Marineland would like to import more dolphins, presumably wild-caught. Is this still an objective?

Mr. Andrew Burns: Sadly Mr. Holer, who is the founder of Marineland, has passed away. Consequently, Marineland is under new management, and all those issues are under appropriate consideration.

Mr. Gord Johns: Mr. Wright, we've heard that Marineland is not an accredited institution; they're working on that.

Do you support their import of wild-caught cetaceans and their breeding for trade and profit?

Mr. Clinton Wright: The Vancouver Aquarium is very clear that we do not support wild capture, and that was very specific in 1996 for Vancouver. We are very specific about not collecting animals from the wild. In fact, there have been no animals taken from the wild in Canada since 1990.

Mr. Gord Johns: Okay.

So you voluntarily ended taking any new cetaceans into captivity.

Mr. Clinton Wright: Correct.

Mr. Gord Johns: The aquarium has only one dolphin remaining. Can you tell us what happened with the last several cetaceans that the aquarium had in its care?

Mr. Clinton Wright: Yes.

Unfortunately, we lost the last two belugas that we had. Actually, Dr. Haulena would probably be a better person to talk to if you want more detail, but they basically died of a toxic event. We've been unable to describe what happened there and determine the exact root or cause of that toxic event.

• (1815)

Mr. Gord Johns: I'll go back to Mr. Burns.

In Marineland, many wild-caught belugas and dolphins, I believe, were from Russia, and there was an orca from Ireland.

How are they captured and does that cause trauma to their family groups? You talked about family groups and the significant impact it

has when you separate families. As well, how are they transported and how is that price negotiated?

Mr. Andrew Burns: A number of the Russian whales came from a program of the Russian military where beluga whales were trained to place limpet mines under ships. When the Soviet Union collapsed, those whales were going to be turned into dog food. Instead, they were eventually transported to Canada and to Marineland. Their only hope for survival was in fact to go to Marineland.

With respect to the transport of whales, this is conducted under the care and oversight of highly qualified veterinarians who participated in the past under very careful conditions.

Mr. Gord Johns: You sell whales. Is that correct?

Mr. Andrew Burns: We don't sell whales. Whales have been requested from other institutions on occasion. In some circumstances other cetaceans have been brought in exchange. Otherwise, there have been funds provided to Marineland. All of those funds are then spent on the beluga whale program. None of that money—

Mr. Gord Johns: Do you believe if a baby whale is separated from the others that there's trauma?

The Chair: Mr. Johns, your time is up. I'm sorry.

That concludes this portion.

I apologize to the witnesses for having to cut it short. There's a vote in about 12 or 13 minutes.

I don't know if it's the wish of the committee to reconvene after the vote for more questioning.

Mr. Blaine Calkins: Mr. Chair, if I may, perhaps members of the committee could be allowed to submit their questions in writing to any of the witnesses who appeared before us today and have those answers back.

Would our witnesses agree to that?

A voice: All right.

The Chair: Thank you. Perfect.

The meeting is adjourned.

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