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PROHIBITION ON CAPTURE OF MARINE MAMMALS (WHALES AND DOLPHINS IN CAPTIVITY)

ANALYSIS

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An Act to prohibit the holding in captivity of whales and dolphins

BE IT ENACTED by the Parliament of New Zealand as follows:

- 1. Short Title and commencement—(1) This Act may be cited as the Prohibition on Capture of Marine Mammals (Whales and Dolphins in Captivity) Act 1999, and is part of the Marine Mammals Protection Act 1978 ("the principal Act").
- (2) This Act comes into force on the day on which it receives the Royal assent.
- 2. Interpretation—(1) Section 2 of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

"'Whale or dolphin' includes all species of cetacea:".

(2) Section 2 of the principal Act is amended by inserting in the definition of the term "take", after the word "possess" in paragraph (a) of that definition, the words "or hold in captivity".

(3) Section 2 of the principal Act is amended by inserting, after subsection (2), the following subsection:

- "(2A) For the purposes of this Act, to hold in captivity a whale or dolphin includes—
 - "(a) The removal of the whale or dolphin from its natural habitat:

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- "(b) Enclosing the whale or dolphin within its natural habitat in such a way that its movements may be constricted or restrained whether that holding is for a commercial or non-commercial purpose."
- **3. Application for permit**—(1) Section 5 (1) of the 5 principal Act is amended by inserting, after the words "hold or take any marine mammal", the words "(other than a whale or dolphin)."

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(2) Section 5 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) No permit may be issued to any person to—

- "(a) Take any whale or dolphin in order to hold it in captivity:
- "(b) Import any whale or dolphin in order to hold it in captivity:

"(c) Hold in captivity any live whale or dolphin."

- (3) Section 5 (6) of the principal Act is amended by inserting after the words "capture any marine mammal", the words "(other than a whale or dolphin)".
- 4. Circumstances in which whales and dolphins may 20 **be held in captivity—**(1) The principal Act is amended by inserting, after section 5, the following section:
- "5A. (1) Subject to this Act, a permit may be issued to take or hold in captivity any whale or dolphin in order to—
 - "(a) Provide medical treatment for a sick or injured whale or dolphin; or
 - "(b) Provide care for a juvenile whale or dolphin that would otherwise be expected to die."
- (2) Where any whale or dolphin is held in captivity at the commencement of this Act, the Minister must issue a permit to the person in possession of the whale or dolphin for such time until the whale or dolphin dies.
- (3) This Act does not apply to the cetaceans known as "Kelly" and "Shona" currently held in the care of the Napier Marineland.
- (4) Before granting any permit under subsection (1) or (2), the Minister must, in addition to any matters the Minister must consider under section 5, be satisfied that the continued captivity of the whale or dolphin is necessary for its safety and survival.

- **5. Conditions of permit**—Section 7 (1) (b) of the principal Act is amended by inserting, after the words "marine mammals", the words "(other than whales or dolphins)".
- **6. Offences and penalties**—(1) Section 23 of the principal Act is amended by adding to subsection (1) the following paragraph:

"(d) Possesses or holds in captivity any whale or dolphin

unless otherwise authorised by this Act."

(2) Section 23 of the principal Act is amended by inserting,

after subsection (2), the following subsection:

"(2A) Every person who commits an offence against subsection (1) (d) is liable on summary conviction to a fine not exceeding \$50,000 and, where the offence is a continuing one, to a further amount not exceeding \$1,000 for every day on which

15 the offence has continued."

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