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THE  
**ANIMAL LAW  
CONFERENCE**

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# Swimming Upstream: The Emergence of Aquatic Animal Law

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[www.whalesanctuaryproject.org](http://www.whalesanctuaryproject.org)



# Overview

- **Who are the animals?**
- **What are the impacts of captivity?**
- **How do captivity issues interface with conservation?**
- **Legal protections and efforts in the U.S.**
- **What is needed?**
- **Whale Sanctuary Project**



# Who are the aquatic animals I am talking about?

Order Cetacea – dolphins, porpoises, and whales

Suborder Odontoceti ( 73 species of toothed whales, dolphins and porpoises)



Delphinidae  
(true dolphins)



Monodontidae  
(belugas & narwhals)



Phocoenidae  
(porpoises)



Physeteridae  
(sperm whales)



Ziphiidae  
(beaked whales)



Platanistidae  
(river dolphins)



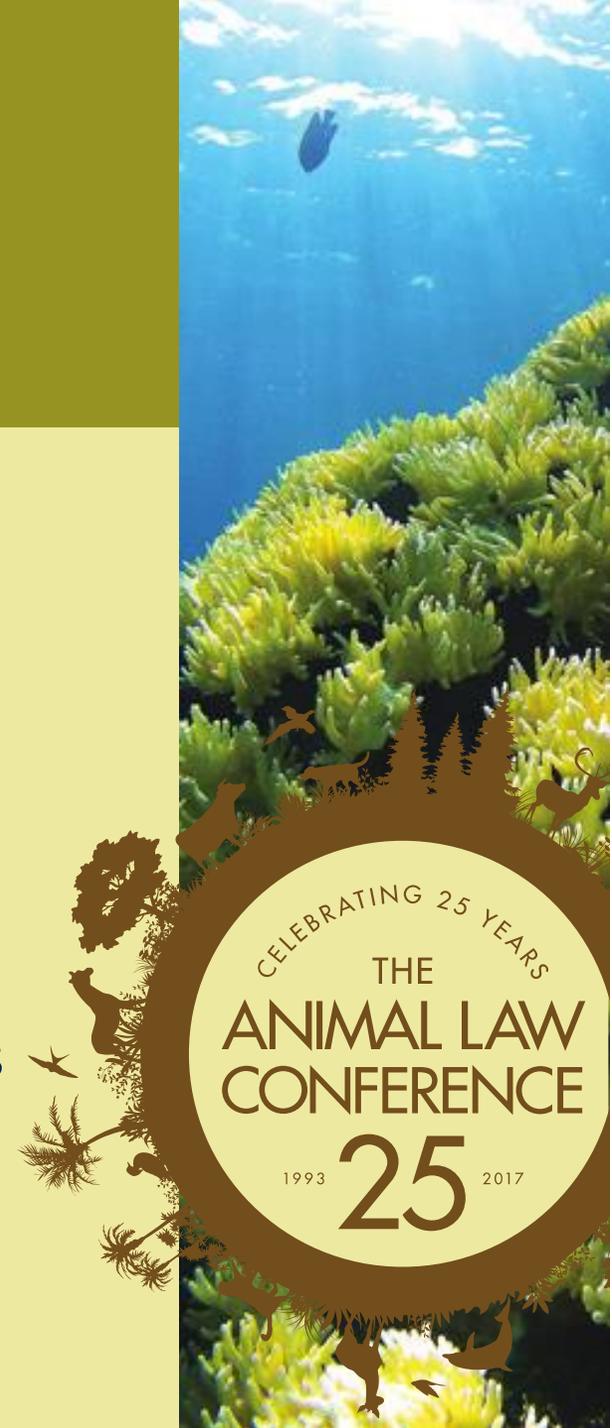
# Captivity by the Numbers

Around **3,000** whales, dolphins and porpoises, representing about 10 species and hybrids, are held in captivity around the world.

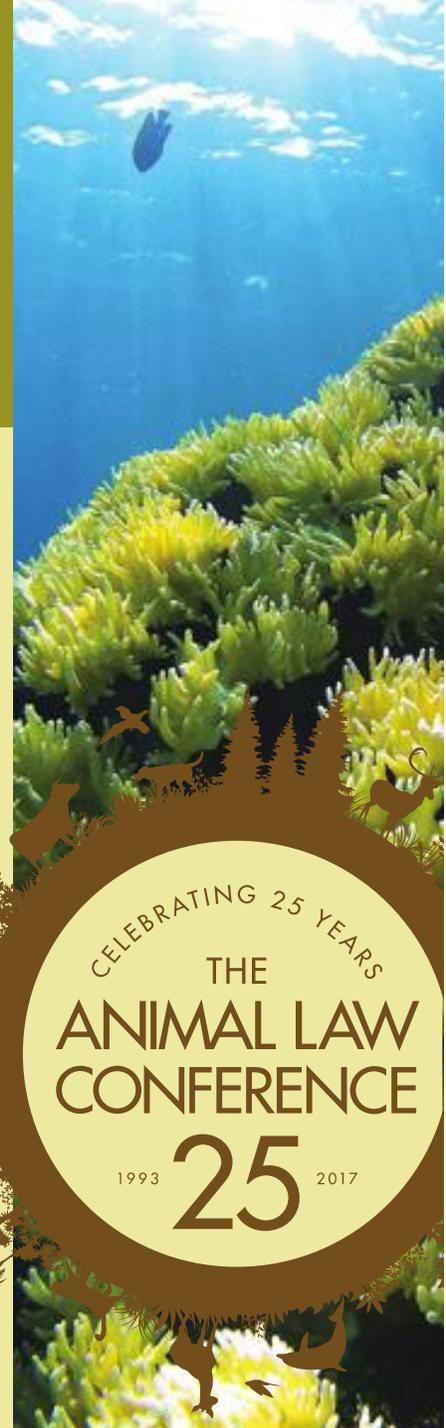
In North America: **481** bottlenose dolphins, **80** belugas, **25** orcas and other species.

There are currently **60** orcas held in captivity (27 wild-captured plus 33 captive-born) in at least 14 marine parks in 8 countries. SeaWorld holds **22** of them.

At least **91%** of all orcas taken into captivity since 1961 have died.



**Delphinidae**  
**Orcas (killer whales)**  
*Orcinus orca*



# Who are orcas?



**Large, complex, convoluted brain**

**Long childhood period characterized by extensive learning**

**Travel > 100 miles/day and can dive to over 200 meters when foraging**

**Complex social communities with cooperative and collaborative hunting strategies**

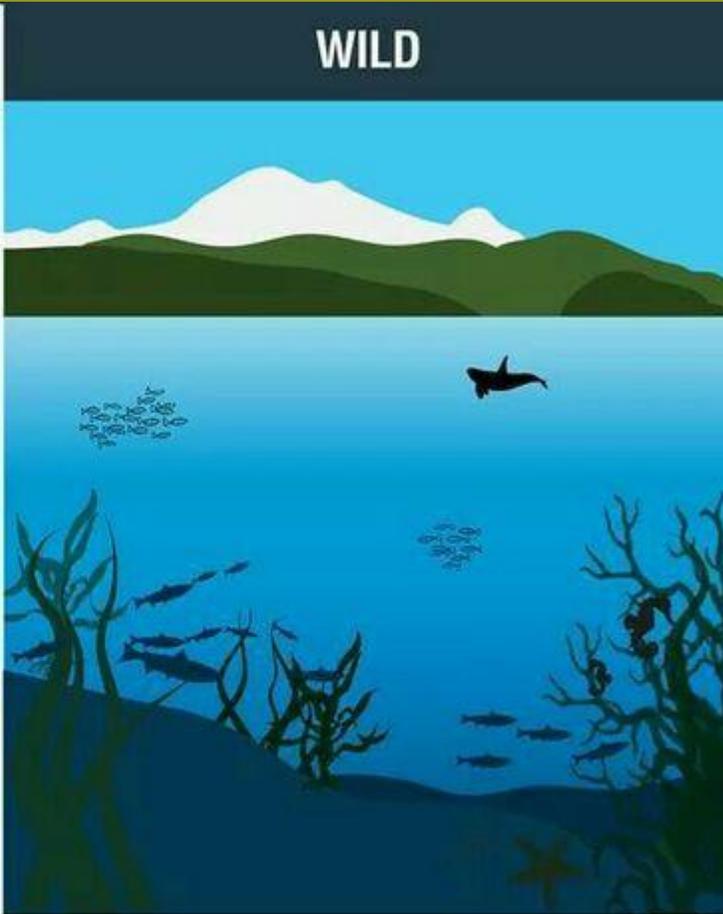
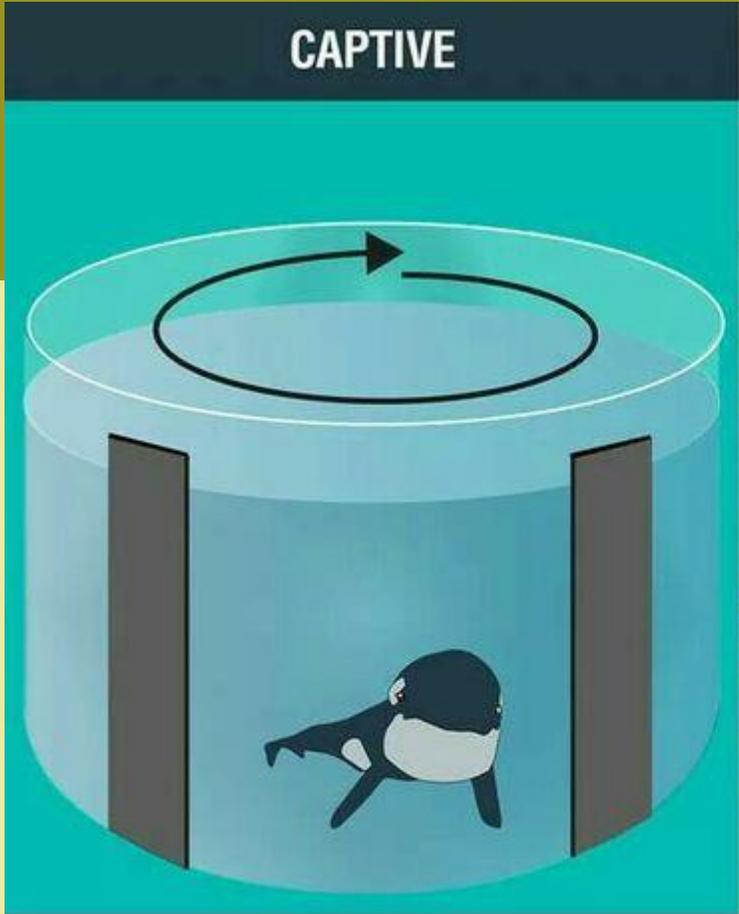
**Lifelong family bonds/most matrilineal**

**Strong cultural traditions**



There is a fundamental mismatch between what orcas (and other cetaceans) need to thrive and the conditions of living in marine parks and aquariums.





An orca at SeaWorld would have to swim the circumference of the main pool more than **1,400** times to match the equivalent daily distance travelled in the wild.



# What are the impacts of living in concrete tanks?

Chronic stress-related physiological, anatomical, and psychological conditions



Pneumonia and other lung diseases

Candidiasis

Gastric ulcers and other stomach diseases

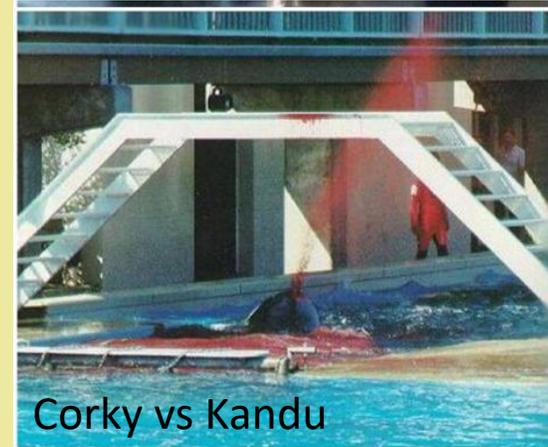
Cancer



Behavioral stereotypes

Self-mutilation

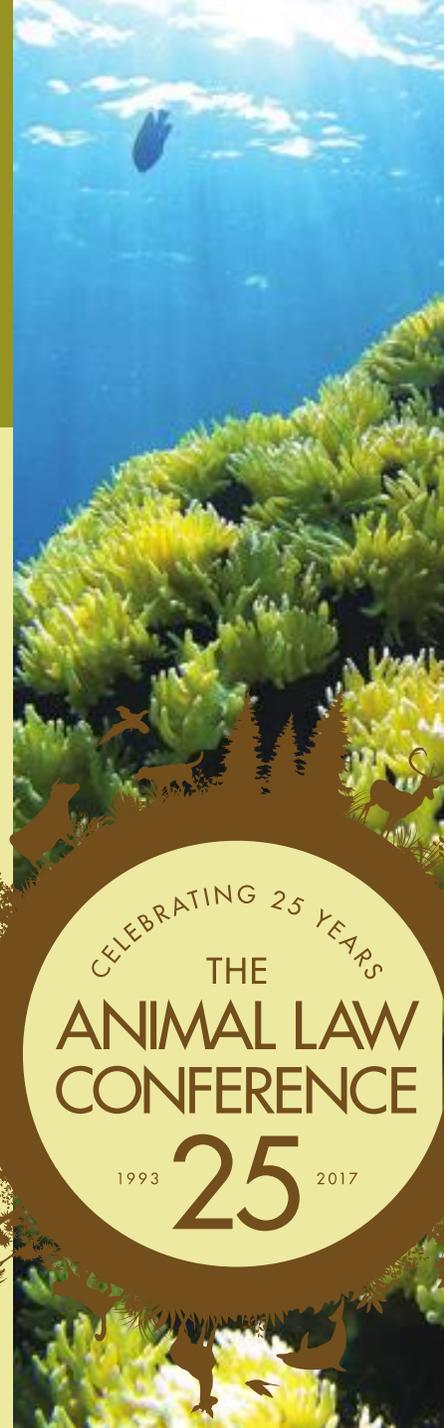
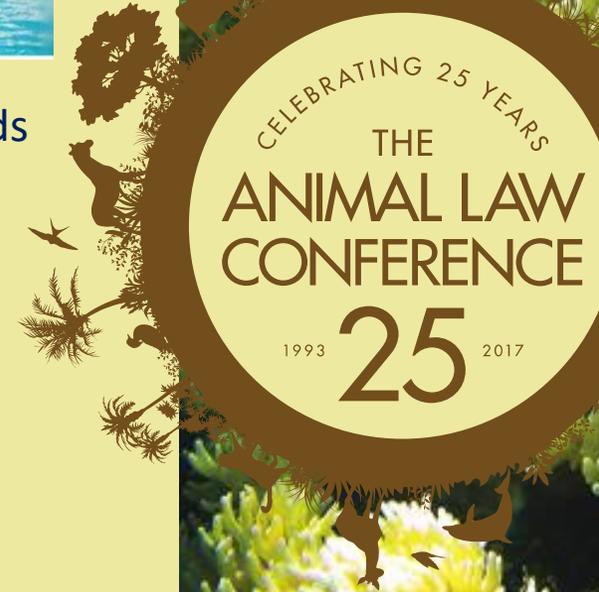
Poor muscular condition



Hyper-aggression towards other orcas (including calves) and humans

Poor parenting

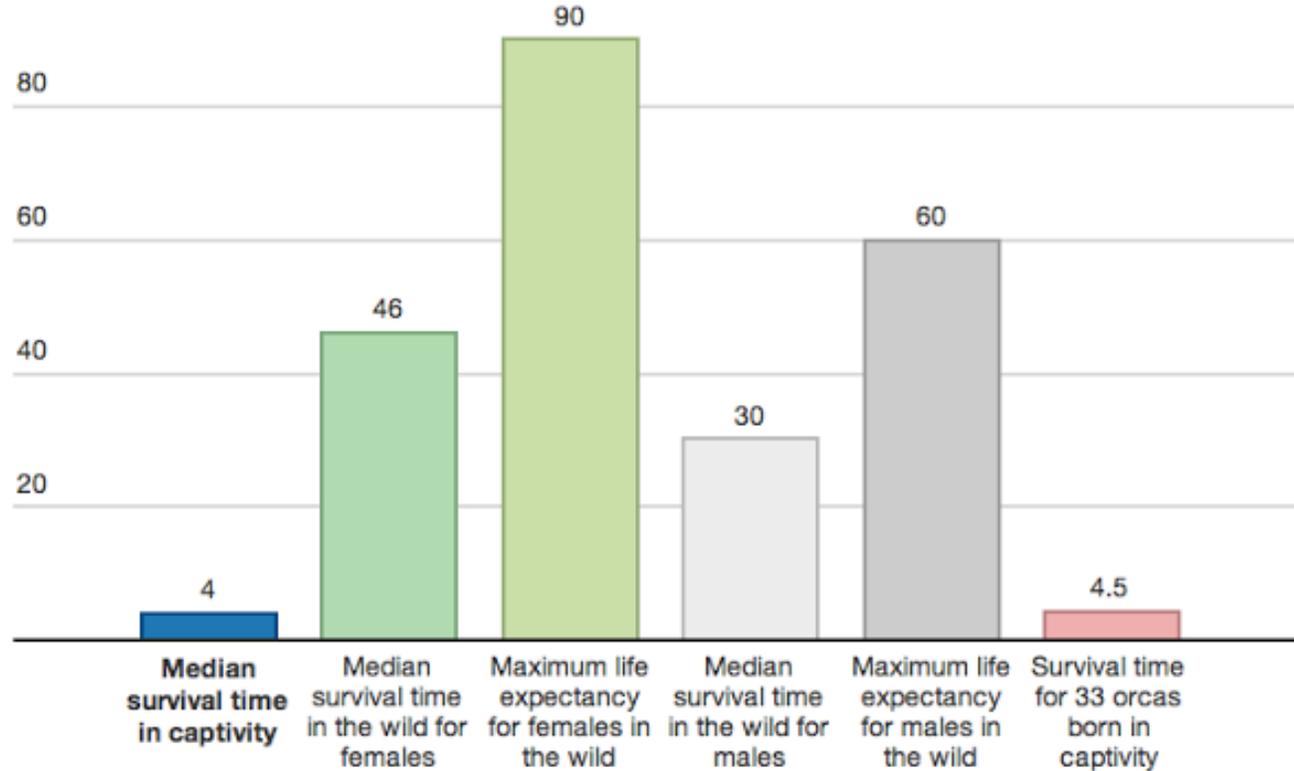
Depression



# Life Expectancy

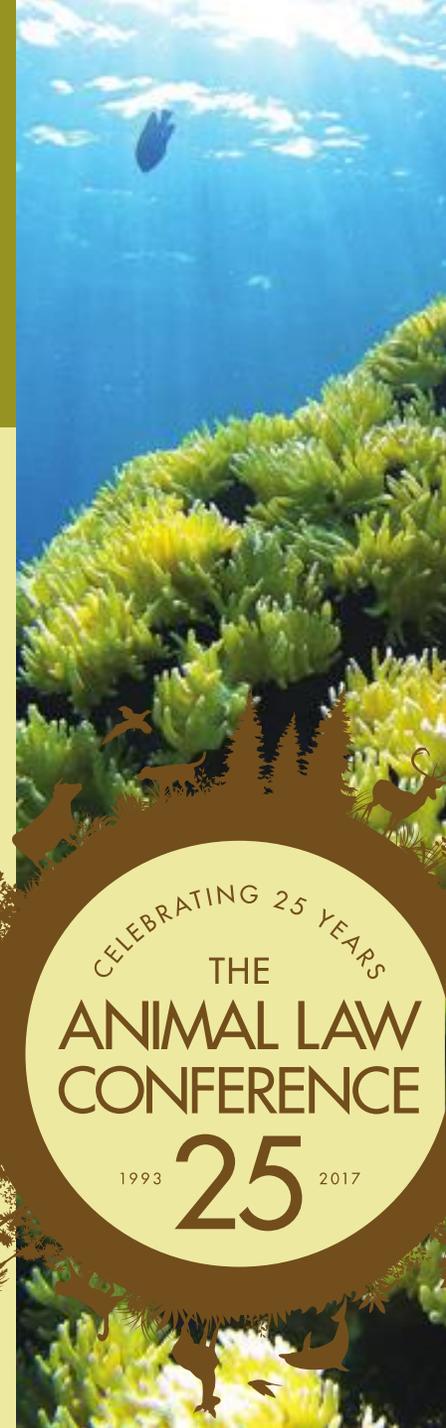
Most captive orcas do not live past 20 years of age.  
Of all wild-caught orcas over half have died after 4 years.

Life expectancy of orcas in the wild and captivity compared



Created with [Datawrapper](#)

Source: [Whale and Dolphin Conservation](#), [Get the data](#)



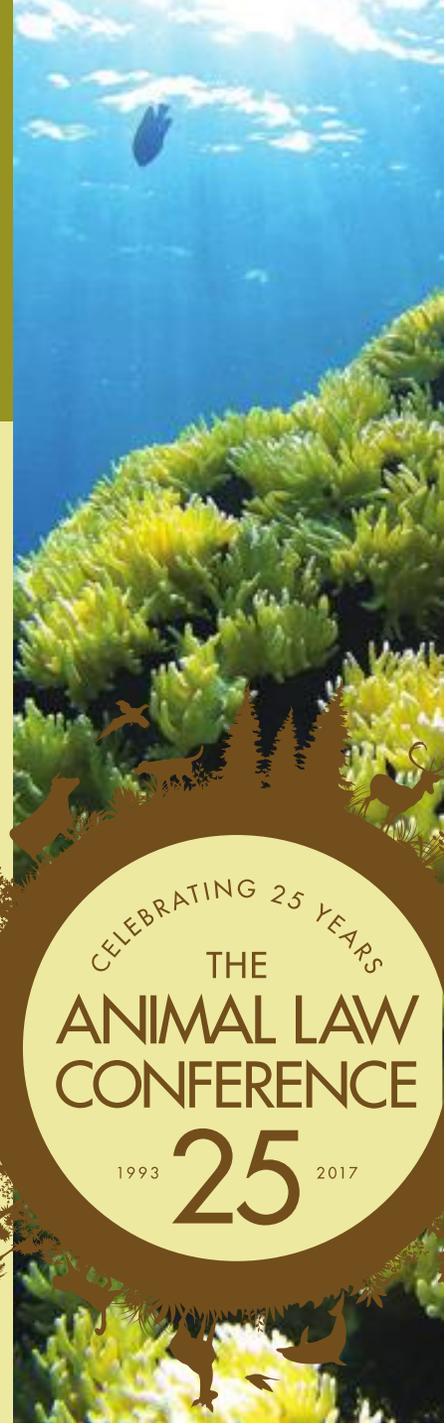
## For dolphins and whales... it is a two-edged problem

### “Loving Them To Death”

They're intelligent 'like us'!  
They're here to heal and rescue us.  
They're *special!*  
They're like fish and other sea creatures!



Lack of Empathy for Them  
Difficult to read their emotions.  
Dolphin “smile”.

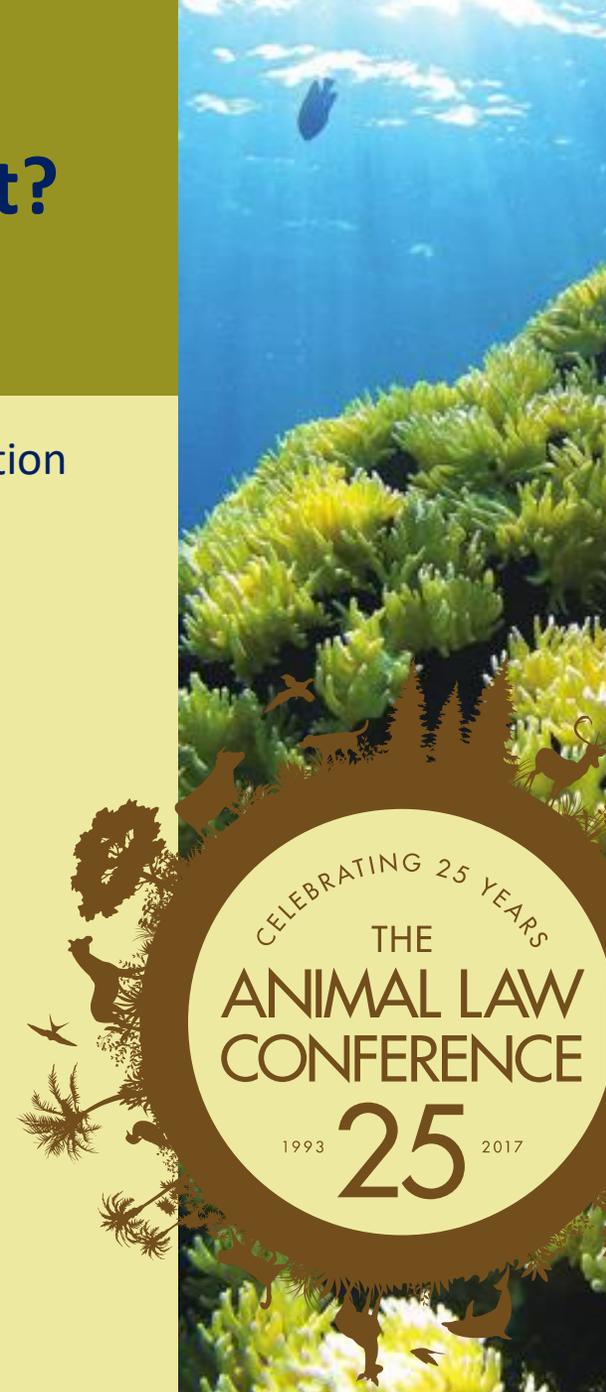
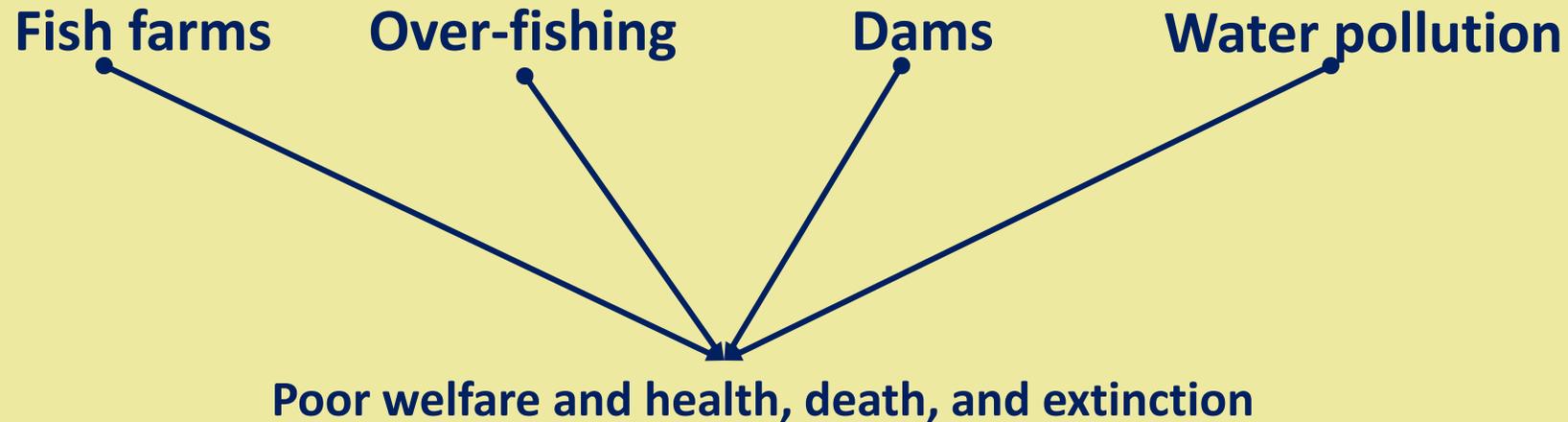


# Where do captivity and conservation issues intersect?

How we treat other animals has everything to do with our objectification and commoditization of them – our relationship with them.

Both fish and marine mammals face similar anthropocentric dangers.

## Salmon and orcas in the Pacific Northwest



# Example: Southern Resident orca population (SRKW) in Salish Sea

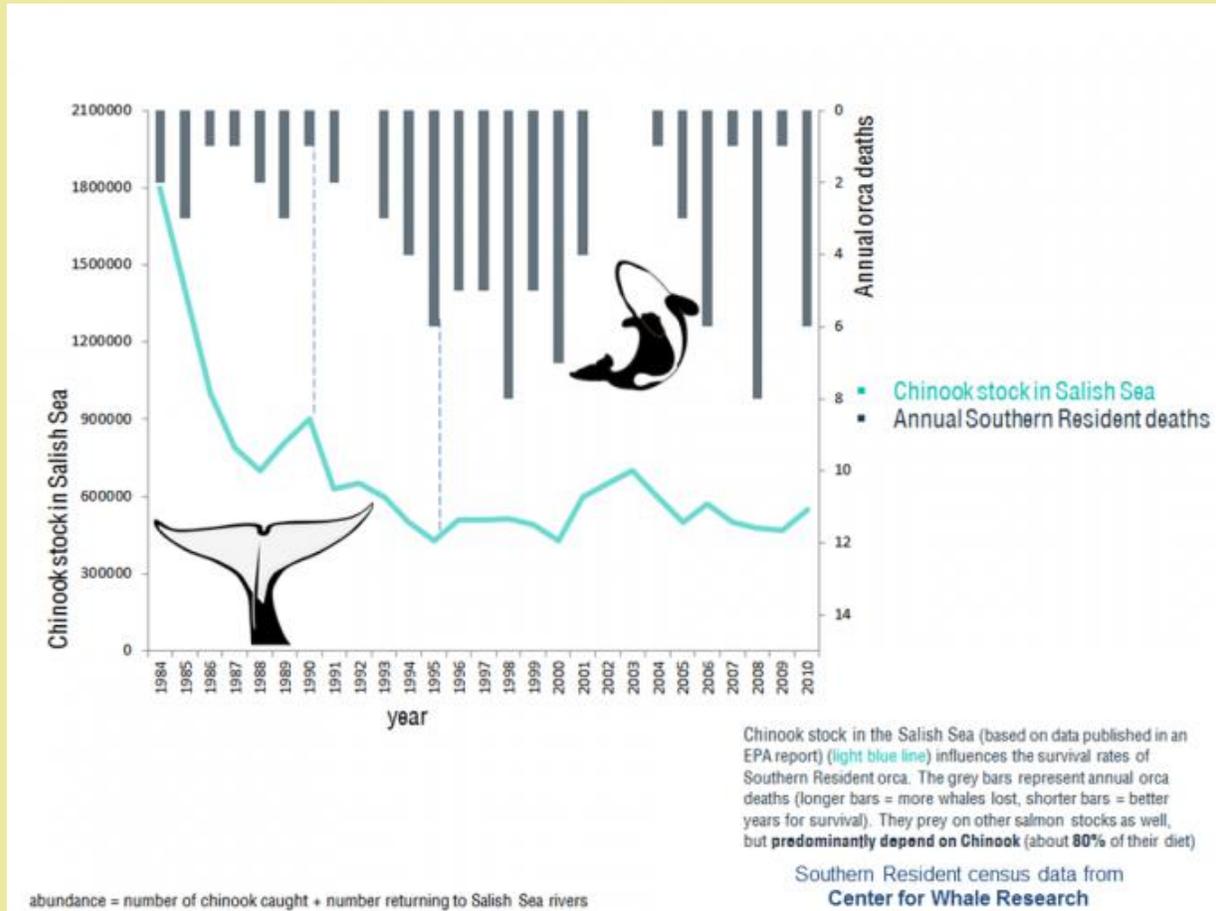
Southern (SRKW) and Northern Resident Killer Whale (NRKW) Critical Habitats in the Georgia Basin-Puget Sound Region



The Southern and North Resident Killer Whale Critical Habitats are displayed in three separate "areas" within the Georgia Basin-Puget Sound region. A small, southern extent of the Northern Resident Killer Whale critical habitat can be found within the Northwest corner of the Salish Sea and for greater detail can be seen within the inset map. The Southern Resident Killer Whale critical habitat is one habitat but is displayed as two separate areas to help illustrate what portion of the habitat is on each side of the Canadian and U.S. border.



# Because chinook salmon make up 82% of their food, SRKW Population Numbers rise and fall with Chinook Salmon numbers



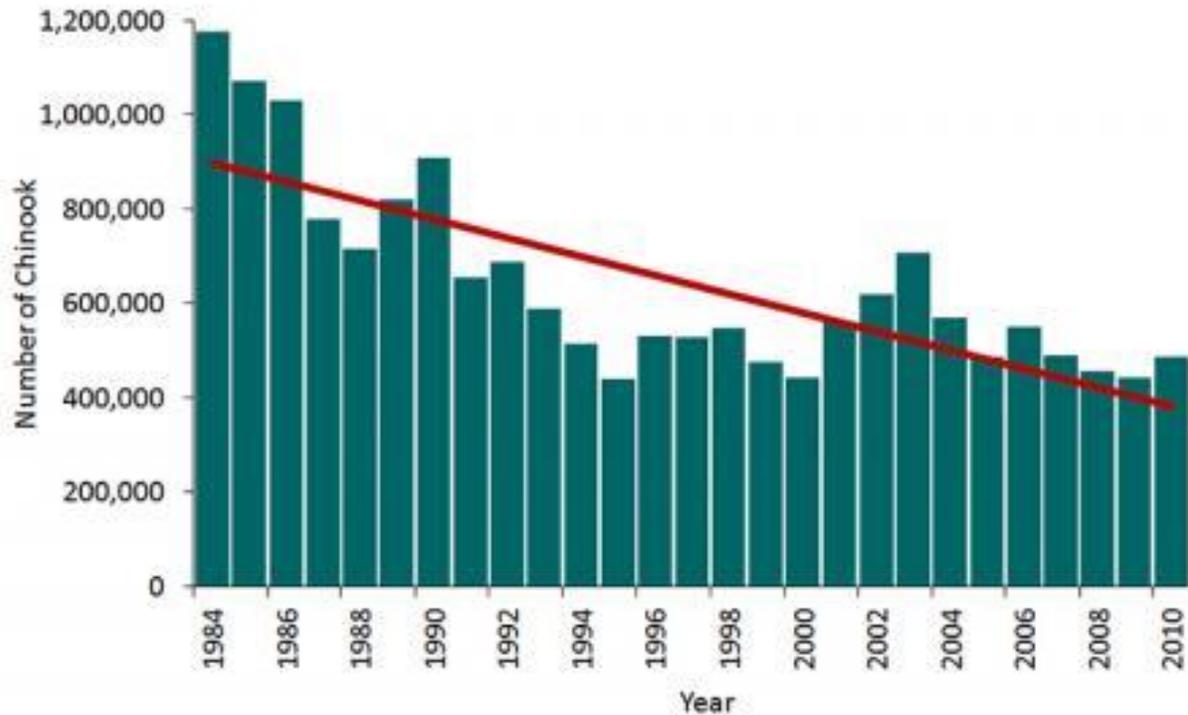
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# Chinook are declining!

The total abundance of chinook has been decreasing since 1984.



\* Abundance = number of chinook caught + number of chinook returning to Salish Sea rivers

The steep decline in Chinook salmon is associated with three main factors:

- Habitat change
- Harvest rates
- Hatchery influence

Additional factors increasingly recognized as contributing to declining salmon populations include climate change, ocean conditions, and marine mammal interactions.



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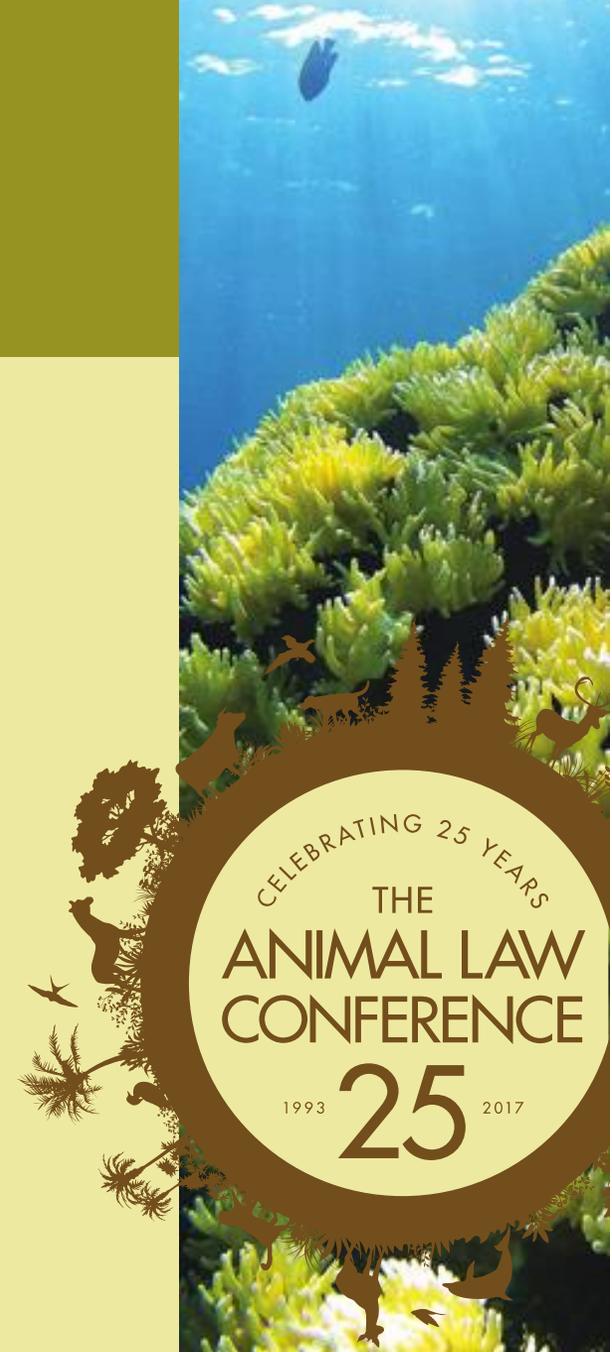
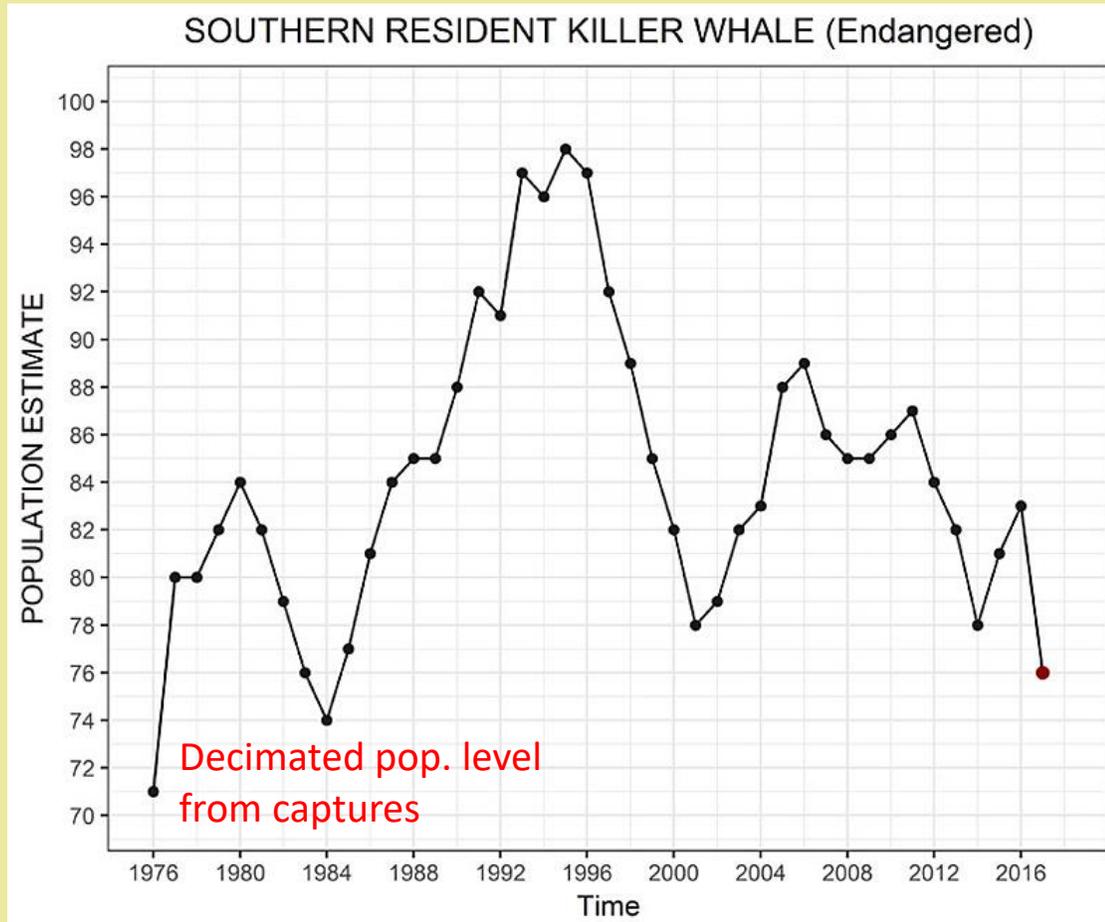
## Captures 1960s – 70s

At least 45 Southern Resident killer whales (mostly young females) were captured and delivered to marine parks between 1965 and 1973. The population has never recovered.



# Status: Listed as **Endangered** in 2005

**CURRENT THREATS:** Decreased prey availability, boat interactions, environmental contamination



The “one-two punch” of capture and prey depletion  
with no time to recover!



# Legal Protections, Regulations and Policy that interface with captivity

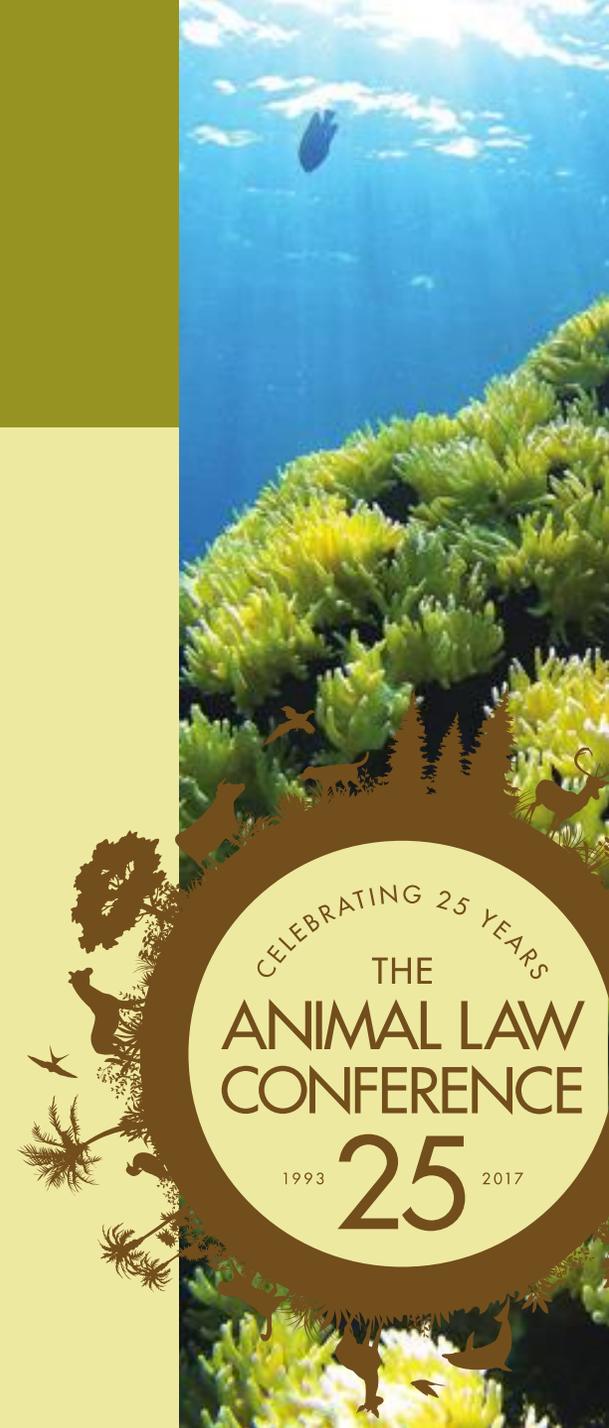
**Endangered Species Act**

**Marine Mammal Protection Act**

**Animal Welfare Act**

**“In-house” regulation - AZA**

**State legislation**



# Endangered Species Act

“To provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions [to implement the Act].”

- Any member of plant or animal kingdom – species, subspecies, distinct population
- Department of the Interior/U.S. Fish and Wildlife Service -- terrestrial species, non-oceanic fish, certain marine mammals
- Department of Commerce/**National Marine Fisheries Service** -- marine species
- Any action that results in “take” of endangered species is prohibited by section 9 of the ESA
- Take prohibition extended to most threatened species by regulation
- Exceptions



# Marine Mammal Protection Act

Take/Harassment Prohibition - Collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.”

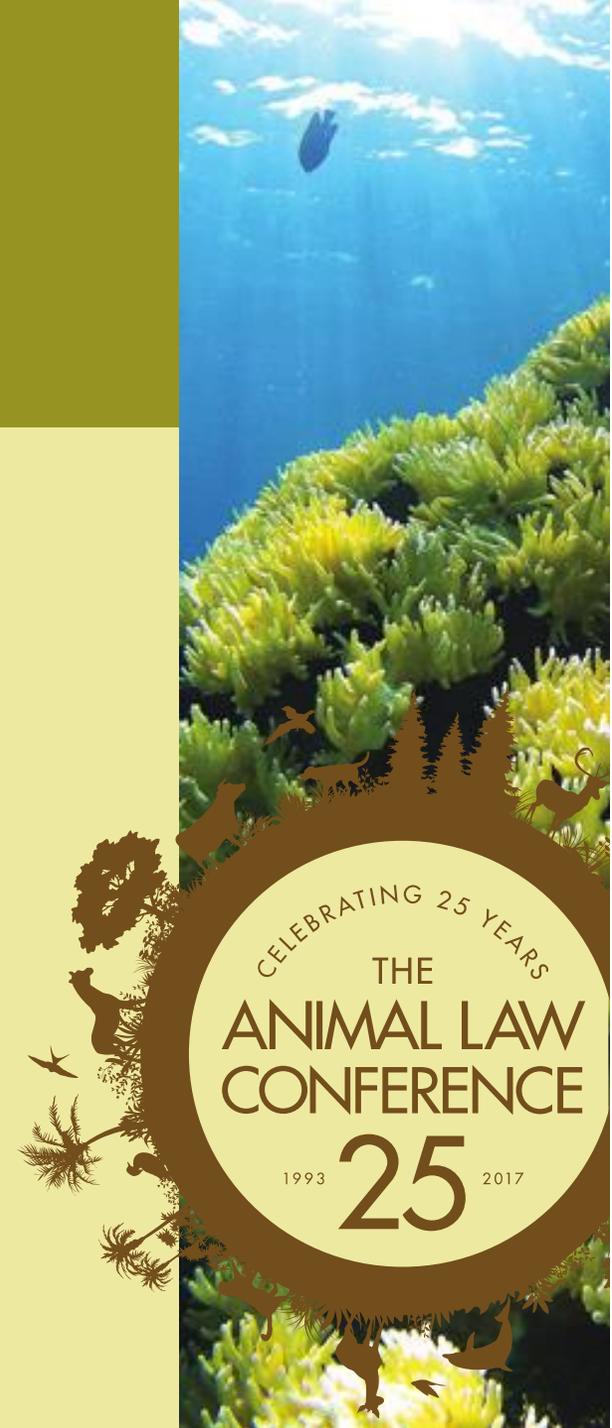
## Permit Process (Exceptions)

Public Display

Scientific Research

Photography for educational/commercial purposes

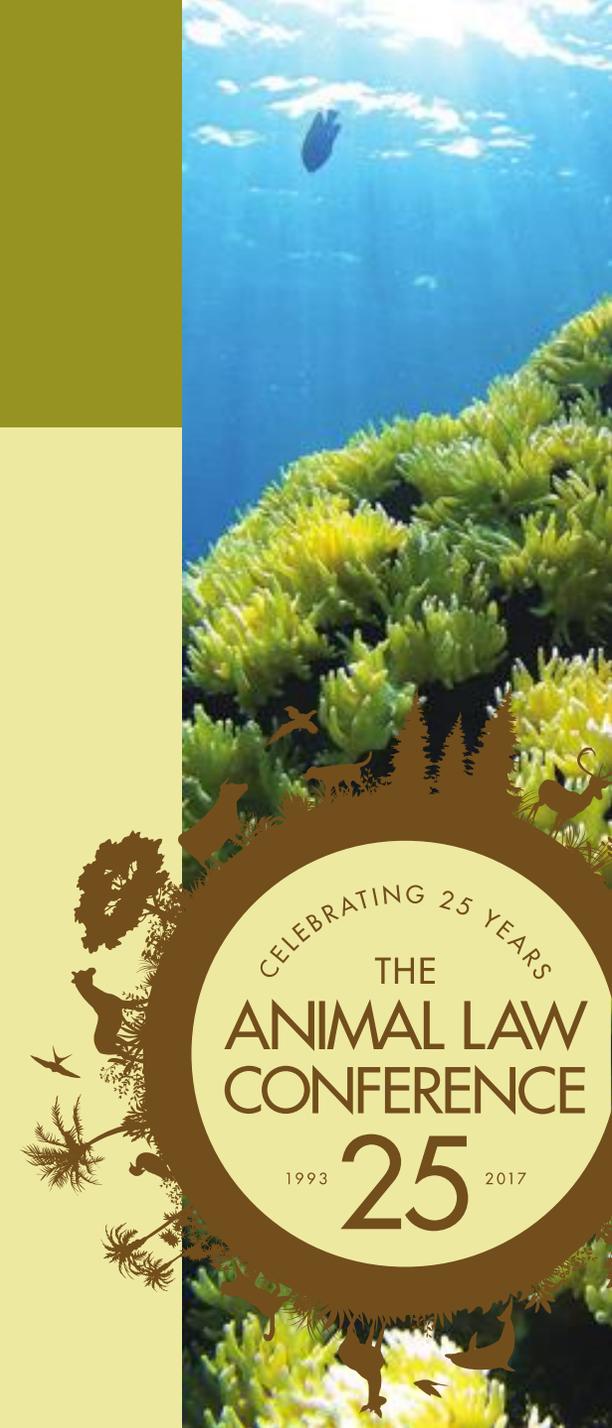
Enhancing survival and recovery



# Animal Welfare Act

U.S. Department of Agriculture  
Animal and Plant Health Inspection Service (APHIS)

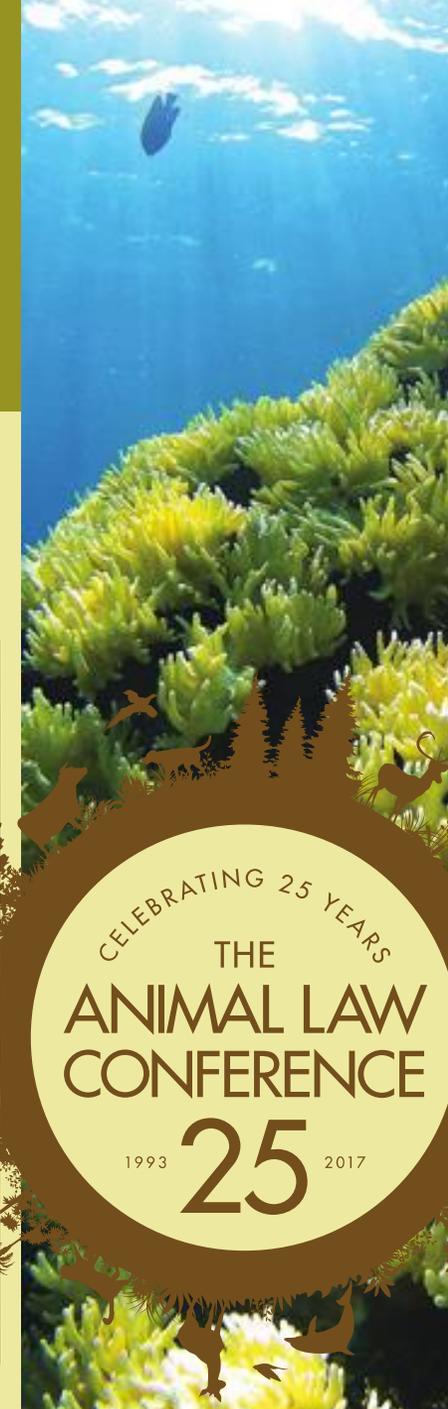
APHIS inspections are few and far between and existing regulations are *minimum* regulations that often do not comply with best scientific evidence and practices.



## Regulation Within and By the Captivity Industry

**World Association for Zoos and Aquariums (WAZA)** has global members who accredit individual facilities.  
**Association for Zoos and Aquariums (AZA)**

*AZA-accredited zoos and aquariums undergo a thorough review that includes a detailed accreditation application as well as a multiple day on-site inspection by a team of experts from around the country.*



# California Legislation



2016 – Orca Protection Act (AB2305) – Assemblyman Richard Bloom (D- 5<sup>th</sup> Assembly District)

This law makes it illegal for any person, institute, or corporation to breed captive orcas, illegal to move or receive captive orcas from any other state or country, and illegal to use captive orcas as a mean of entertainment/performance.

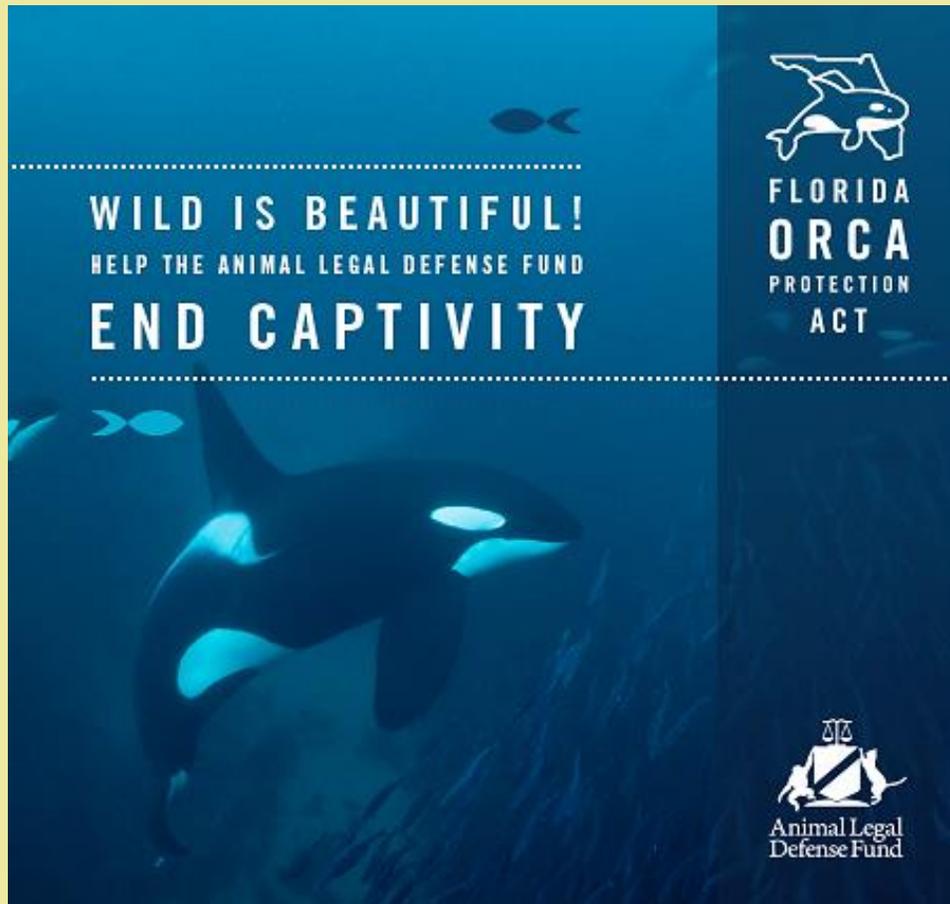
A violation of this law from any person, institute, or corporation is a \$100,000 fine and/or 6 months in jail as a misdemeanor.

The law also establishes that the remaining captive Orcas in California are to be used for educational purposes and will exhibit natural behavior with a live science-based narration to the public.



# Florida Orca Protection Act

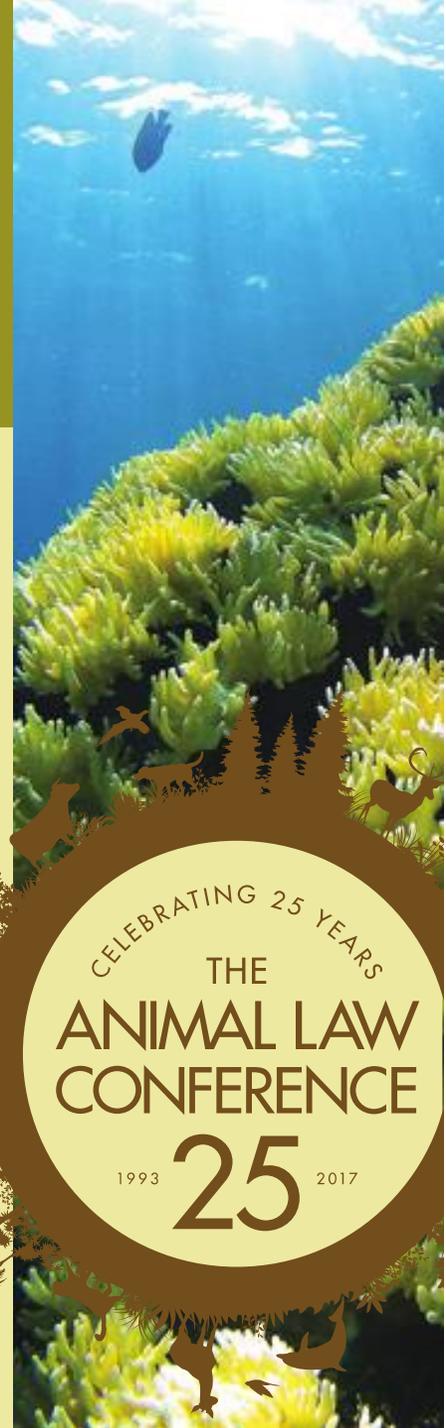
## Turning Promises Into The Law!



Prohibits breeding captive orcas.

Prohibits the transport of orcas into Florida or out of North America, unless the transport was to a seaside sanctuary.

Guarantees that those orcas already held in captivity in Florida would only be held for research or rehabilitation purposes and that any public displays must be strictly educational.



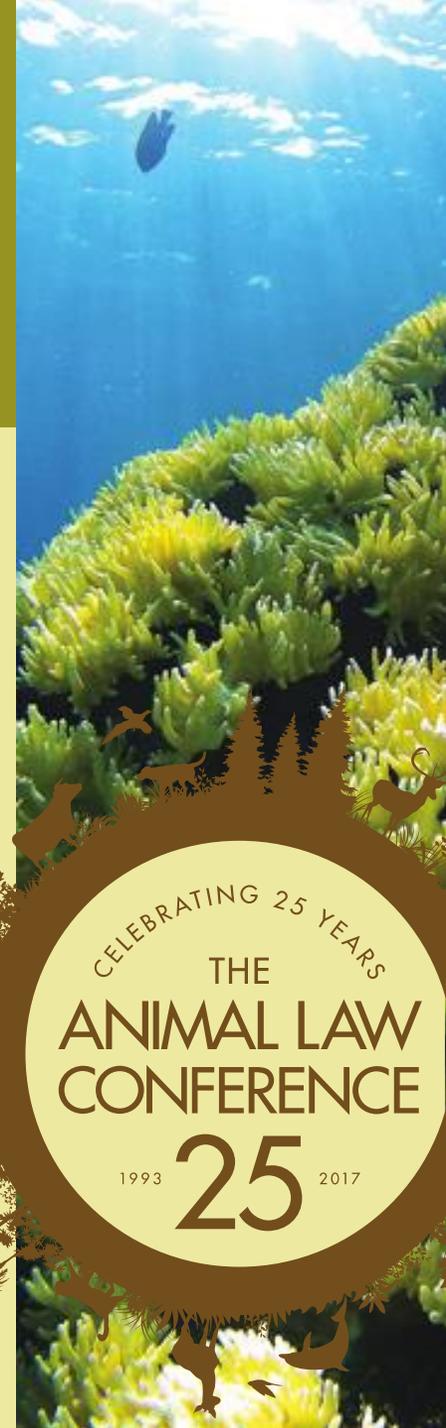
# What do we need?

Recognition and enforcement of legal rights  
Authentic and Concrete Forms of Restitution

Breeding made illegal - Florida Orca Protection Act

Legal personhood rights – Nonhuman Rights Project

Restitution – Sanctuaries



# What is the alternative for captive cetaceans?



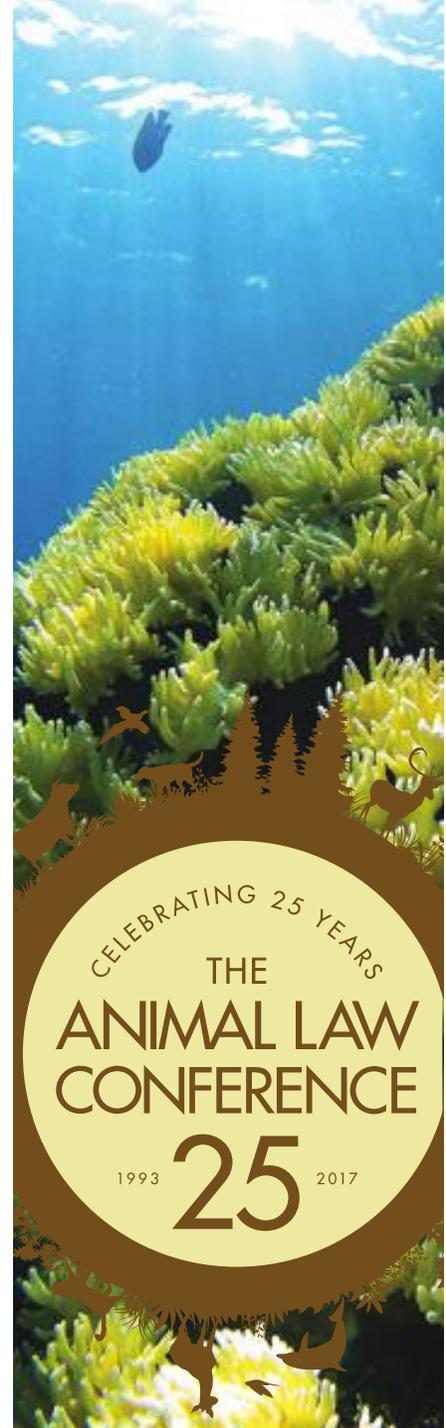
**There are permanent sanctuaries for all kinds of large mammals – but none for cetaceans.**

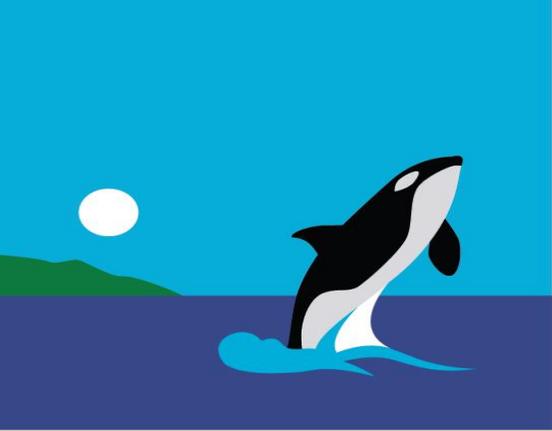


# The Whale Sanctuary Project



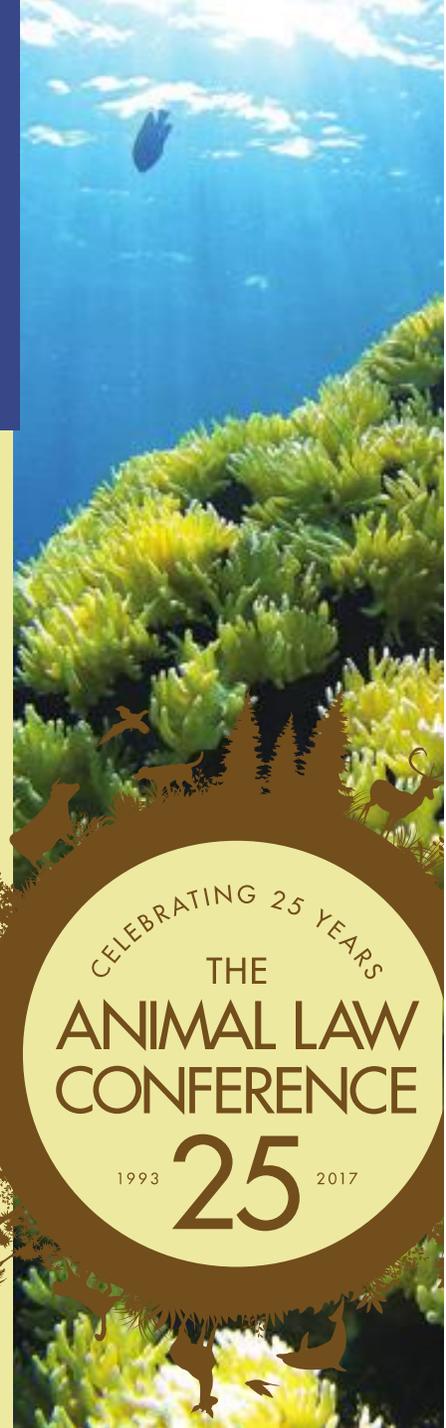
*Back To Nature*





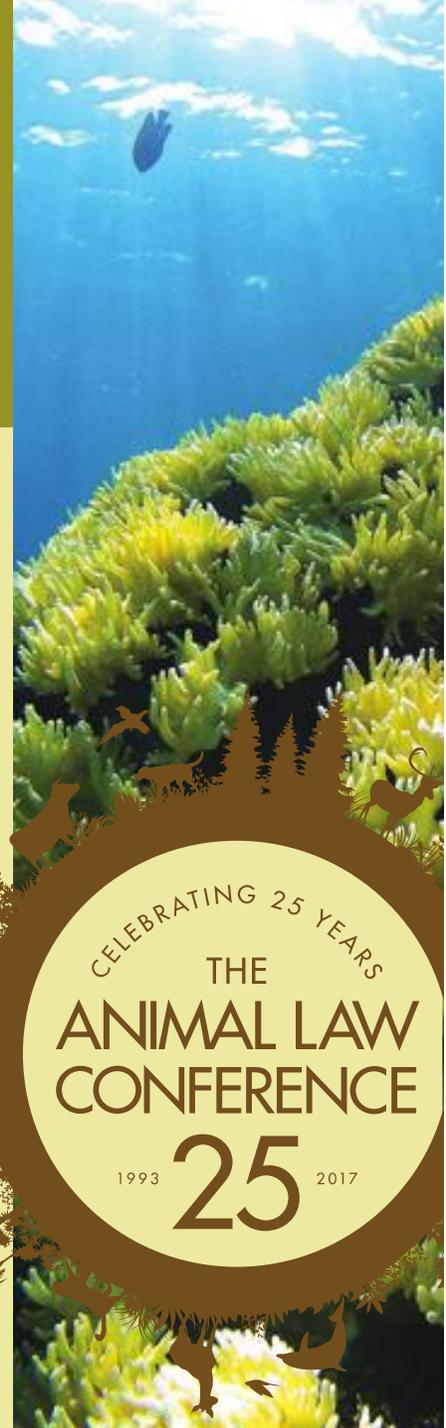
# The Whale Sanctuary Project Mission

**To establish a permanent seaside sanctuary where cetaceans (orcas and belugas) can live in an environment that maximizes well-being and autonomy and is as close as possible to their natural habitat.**

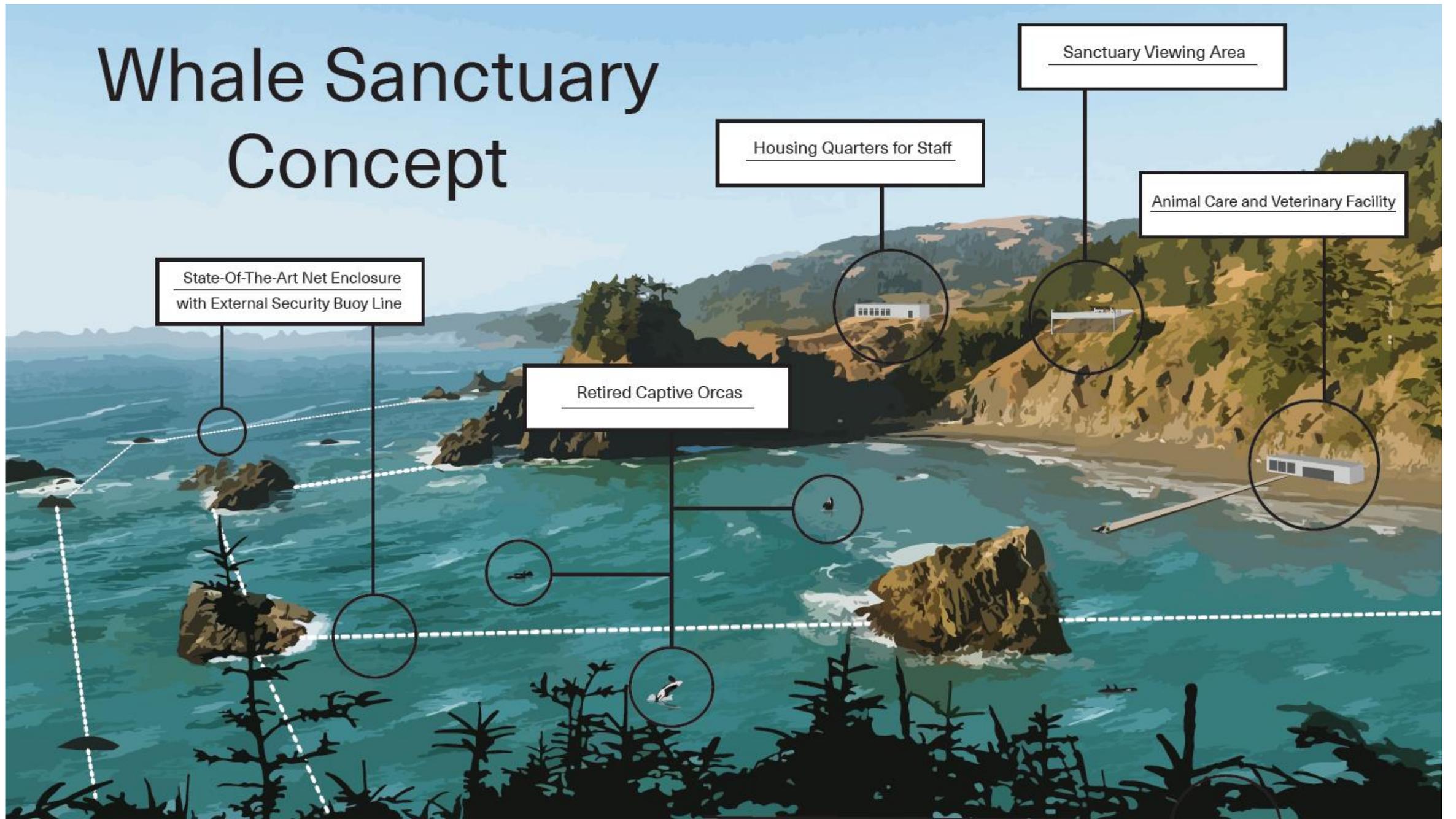


# What are the characteristics of a sanctuary?

- *Animal well-being is the priority*
- *Individualized care*
- *Promotion of autonomy*
- *Restoration to a natural life*
- *Rescue, Rehab and Reintroduction (when possible)*
- *No exploitation, no breeding, no invasive procedures*
- *Education and Conservation*
- *Transparency*
- *Sustainability*



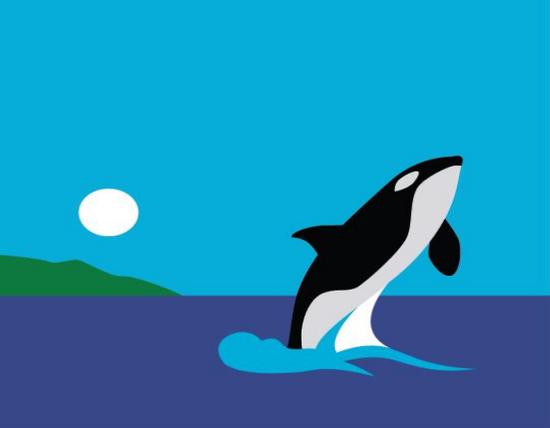
# Whale Sanctuary Concept





# Site Selection





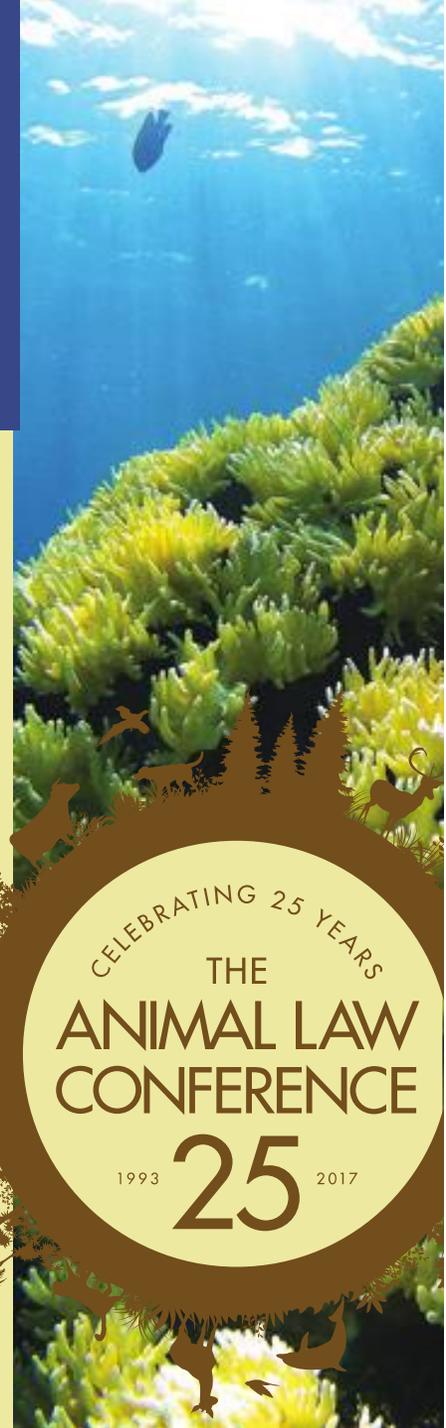
# Criteria for Site Selection

## The Environment Part

- No negative effects on wildlife or environment
- Target minimum size of ~65 acres
- Appropriate temperature (~10 – 20 C) and salinity (25-35 ppm) range
- Protection from extreme weather
- Avoidance of sewage or pollutants (chemical or acoustic)
- Good flushing rate
- Minimum depth of 15 meters for at least 50% of the sanctuary
- Able to hold 5-8 individuals, potential for separation of animals
- Ability to create separate compartments for medical and management purposes
- No ice cover
- Accessibility
- Utilities and infrastructure

## The People Part

- Regulatory compliance
- No impact on local fisheries
- Stakeholder engagement
- First Nations consultation





# Timeline and Milestones



Please visit us:

[www.whalesanctuaryproject.org](http://www.whalesanctuaryproject.org)

also on Facebook and Twitter

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*Thank you!*

