

Don't let Marineland tell you that its whales have to be euthanized

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FULL TEXT

Professor of law and history and the director of the Animal Law program at the Jackman Faculty of Law at the University of Toronto Both the Ontario government and the now-shuttered Marineland park in Niagara Falls, Ont., are pointing fingers at Ottawa for denying permits to export Marineland's 30 belugas to the Chimelong Ocean Kingdom in China. Marineland is claiming there are no other options for the whales, and last week –to the shock and horror of many –threatened to kill them unless the federal government provided funding for their upkeep.

The federal government rightly said no to this extortionist tactic. But Marineland's claim that the whales must either be sent to China or killed is simply not true.

The Whale Sanctuary Project in Nova Scotia might yet be able to overcome challenges from landowners at the proposed site in Port Hilford and close its funding gaps. There is also a beluga whale sanctuary in Iceland currently housing two individuals rescued from marine parks in China: Little White and Little Grey.

There are reports of a privately funded proposal for an inland park at the current site proposing to build deeper and larger tanks that would provide more humane housing and allow the animals to stay together. There are also existing tanks at the Vancouver Aquarium, which could be operationalized once more if the Vancouver Park Board were to agree it was necessary in this emergency situation.

The mayor of the town of Burgeo, N.L., has said that it would welcome the whales into the community, and that it could provide funding for their transit to a small, salt-water inlet there. An Inuit-led solution for training for wild release has also been proposed.

And export to the United States could carry a commitment to not breed the animals. An aquarium in Mystic, Conn., or other options in the U.S. would be closer and thus a better option than sending the animals to the other side of the world –a transport many of them would likely not survive.

All of these options need to be explored, especially in light of the fact that the federal government has indicated it is open to other permit applications.

The threat to kill the belugas, even if healthy, is shocking. It also belies the special legal protections that exist for belugas and whales under Canadian law.

The Provincial Animal Welfare Services has the authority to intervene here. If PAWS were to seize the animals on the grounds that they are in distress, they could “take possession” of the animals and order the necessary independent health evaluations that would facilitate figuring out who should go where.

Given the circumstance here, taking possession in this legal sense does not mean physically moving them, at least not immediately, but rather seizing them in place until the best course of action can be determined. The province would then effectively become their guardian with reasonable costs of care charged to Marineland.

If Marineland declares bankruptcy, the province would join other creditors lining up to be paid out of the bankruptcy proceedings. Given the value of the land on which Marineland sits, it is difficult to believe the receiver would not have the funds to reimburse the province for the costs of care.

Once the animals are seized and subsequently forfeited to the Crown, the province could then become the permit applicant, whether to the federal Minister of Fisheries for permits to export the animals out of the country (if it were to pursue the options in Iceland or the U.S.) or between provinces (for example sending them from Ontario to Nova

Scotia or Newfoundland and Labrador) under a statute that might have the honour of carrying the longest and most difficult to remember title: the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.

Marineland has made a tremendous amount of money off the backs of these animals.

Threatening them in the way they have shows they are no longer fit to be their guardian and cannot be trusted to apply for permits that would be in the best interests of the animals. The province needs to step in, take possession of the animals, order independent veterinary assessments, and work with experts and stakeholders on finding solutions –not just for the belugas, but for the bottlenose dolphins, black bears, deer, seals and sea lions currently also stranded at the facility. All of these animals deserve a chance to be rehomed.

DETAILS

Subject:	Bankruptcy; Animals; Whales &whaling; Permits; Funding
Business indexing term:	Subject: Bankruptcy
Location:	China; Iceland; Nova Scotia Canada; United States--US; Canada
Company / organization:	Name: Marineland; NAICS: 712130
Publication title:	The Globe and Mail; Toronto, Ont.
First page:	A9
Publication year:	2025
Publication date:	Oct 15, 2025
Section:	News
Publisher:	The Globe and Mail
Place of publication:	Toronto, Ont.
Country of publication:	Canada
Publication subject:	General Interest Periodicals--Canada
ISSN:	03190714
Source type:	Newspaper
Language of publication:	English
Document type:	News
ProQuest document ID:	3261346142

Document URL:	https://ezproxy.library.uvic.ca/login?url=https://www.proquest.com/newspapers/dont-let-marineland-tell-you-that-whales-have-be/docview/3261346142/se-2?accountid=14846
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Last updated:	2025-10-16
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Database:	Canadian Newsstream Collection
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