

Laws Banning Cetacean Sales or Breeding

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Issue

Summarize U.S. state and Canadian laws banning cetacean trades, sales, or captive breeding. A cetacean is a whale, dolphin, or porpoise in the order of Cetacea.

Summary

Based on a WestLaw search of U.S. state statutes, it appears that California is the only U.S. state to ban selling or breeding certain cetaceans. Specifically, California bans holding, breeding, or impregnating an orca held in captivity, subject to certain exceptions. It also prohibits selling an orca to another state or country. A bill introduced in 2019, which is pending legislative action, would extend the law's scope to include all cetaceans.

We found one additional relevant state law. In South Carolina, it is unlawful for anyone to display a cetacean, whether wild caught or bred in captivity.

Certain U.S. federal laws also help protect cetaceans, including the Marine Mammal Protection Act and the Animal Welfare Act. We briefly describe these below.

In 2019, Canada enacted national legislation banning anyone from holding, breeding, or impregnating a cetacean with certain exceptions (e.g., grandfathering cetaceans already in captivity). The bill received royal assent and became law on June 21, 2019.

United States

California

California's Orca Protection Act ([Cal. Fish & Game Code § 4502.5](#)) prohibits anyone from:

1. holding in captivity an orca, whether wild caught or bred in captivity;
2. breeding or impregnating an orca held in captivity;
3. collecting, exporting, or importing an orca's reproductive materials, including semen and embryos, for artificial insemination purposes; and
4. selling, exporting, transporting, or moving an orca to another state or country unless (a) authorized by federal law or (b) the transfer is to a facility that meets federal Animal Welfare Act standards.

The act exempts from these prohibitions a bona fide educational or scientific institution holding an orca for (1) rehabilitation after a rescue or (2) research purposes. After rehabilitation or research is complete, the institution must return the orca to the wild whenever possible. If not possible, the orca may be used only for educational presentations. It may not be used for breeding, performance, or entertainment purposes.

Additionally, the act permits orcas located in California on January 1, 2017, to remain in captivity. Beginning June 1, 2017, these orcas can be used only for educational presentations.

Anyone who violates the act's prohibitions is guilty of a misdemeanor and is subject to a fine of up to \$100,000.

Proposed Legislation. In 2019, legislators proposed a bill to expand the Orca Protection Act's provisions to all cetaceans ([AB 1040](#)). The legislature referred the bill to the Committee on Water, Parks, and Wildlife, which has taken no action to date.

South Carolina

It is unlawful to display a wild caught or captive-bred cetacean in South Carolina. A person or corporation violating the law is guilty of a misdemeanor and subject to a fine of up to \$1,000 or imprisonment for up to six months ([S.C. Code Ann. § 50-5-2310](#)).

Relevant Federal Laws

Marine Mammal Protection Act (MMPA). Among other things, the [MMPA](#) prohibits the "taking" of marine mammals, including cetaceans, without specific authorization. It also prohibits

anyone from transporting, purchasing, exporting, selling, or offering to purchase, export, or sell, any marine mammal that (1) was taken in violation of the act or (2) for any purpose other than public display, scientific research, or enhancing a species' survival ([16 U.S.C. § 1372](#)).

Animal Welfare Act (AWA). The [AWA](#) generally governs the humane care, handling, treatment, and transportation of animals. According to [this 2010 article](#) by the Michigan State University College of Law's Animal Legal and Historical Center, facilities that display orcas are exhibitors as defined under the AWA. As such, an exhibitor must obtain a license, without which the exhibitor cannot sell or transport an orca to another facility ([7 U.S.C. § 2134](#)).

Canada

Canada enacted the Ending the Captivity of Whales and Dolphins Act ([Bill S-203](#)) in June 2019. Under the act, it is illegal for anyone to keep a cetacean in captivity, breed or impregnate a cetacean, or possess or try to obtain a cetacean's reproductive materials.

The act allows certain exceptions to these prohibitions. Specifically, it allows anyone who already holds a cetacean in captivity upon the act's passage to continue to do so. It also allows someone to hold a cetacean in captivity (1) to provide it care or rehabilitation following an injury or other distress or (2) pursuant to a license a province's lieutenant governor in council, or his or her agent, issues. Additionally, the act allows someone to conduct scientific research or show the cetacean for entertainment purposes only if authorized under a province-issued license.

Anyone violating the act is guilty of an offense subject to a fine of up to \$200,000 CAD (about \$150,000 U.S. dollars).

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