CHAPTER 7

ETHICS

7.1 Critics have argued that the question of keeping cetacea captive is essentially an ethical one which cannot be resolved simply by weighing scientific evidence. Some people have pointed out that public attitudes are undergoing a fundamental change in relation to animals. Bossley believed that:

> '... we are now on the verge of a revolution in the area of moral philosophy relating to individual rights, be they the rights of various disadvantaged humans such as oppressed groups (e.g., women, blacks, the disabled) or the rights of other species.'[1]

Project Jonah noted that:

> 'There is definitely a change taking place in people's feelings towards the other inhabitants of this earth.'[2]

7.2 Many people concerned with animal welfare now question whether humans are entitled to exploit animals and to act in a manner which will cause animals to suffer.

7.3 Critics argue that oceanaria exploit cetacea primarily for profit and that this is morally indefensible because it causes suffering to cetacea who, as intelligent and complex beings, are entitled to greater consideration by humans.[3]

7.4 They believe that arguments advanced by oceanaria, for keeping cetacea captive, such as enrichment, awareness and improved knowledge, are inconsistent with, and subordinate to, their commercial motives. Carter has stated:

'U.S. dolphinaria interests, self described as an industry, have emphasised its money value and the number of persons employed. Such matter are anthropocentric. The acquisition of cetacean specimens, bought or caught, represents significant financial investments as do the construction and maintenance of dolphinaria facilities. The case is similar with safari parks and other captive animal display enterprises providing public entertainments.

Clearly then the nature and focus of commerce differs from that of conservation, science and education ... At present, allowing for compromises, there will arise differences of priority; and where economic parameters are dominant those of conservation, science and education are likely to be hybridised.'[4]

7.5 However, proponents of oceanaria deny that keeping cetacea is immoral and they argue that the recreation/ entertainment function of oceanaria is subordinate to their role of raising public awareness and concern for conservation of the species. The Animals on Display Workshop has stated:

'Some people contend that it is morally wrong to remove animals from the wild and hold them in captivity, either because they believe that some animals have evolved sufficiently to acquire rights equivalent to those recognized for human beings, or because they believe animals are severely harmed by life in captivity. These beliefs are not currently supported by sufficient scientific evidence. Consequently, they do not provide a factual basis for an overriding moral objection to displaying animals in captivity. Human beings have a special responsibility to preserve and respect animals as part of the natural environment. Animals suffer when human action is indifferent to their pain and distress or when it causes irresponsible disruption of their habitat. Human beings, as a matter of moral obligation, owe compassion and humane treatment to animals in captivity. Bringing animals into captivity alters their natural state. If captivity causes adverse effects,

> these effects, on balance, are outweighed by such benefits as enhancement of human appreciation for all animals, conservation of species, and advancement of knowledge.'[5]

7.6 Abel considered that displaying cetacea for recreation is justified because it is necessary to encourage learning. He stated:

> 'It is a recognised fact that people will not pay for merely an educational demonstration. They will however, pay for entertainment and accept all the educational experiences provided. I feel I must emphasize again the fact that the dolphins are not "made to do tricks" in providing the entertainment requirements essential for attracting a large segment of the population to the facility in the first place.'[6]

7.7 However, critics consider that even if oceanaria could show that profit and recreation were not the primary motives of oceanaria, the use of captive cetacea for education and research is not only of dubious benefit but is also morally questionable.

7.8 Bossley argued that display based on the subordination of cetacean to trainer, teaches only that humans have the right to exploit cetacea, although he did not provide empirical research to substantiate his argument.[7]

7.9 With regard to research Bossley considered that:

> '... one does have to temper the pursuit of scientific knowledge with certain moral considerations ... The justification of obtaining scientific evidence is not a sufficient reason these days necessarily to legitimate a practice.'[8]

Carter notes that Pilleri thought that in scientific research on cetacea, an important ethical cost-benefit analysis needs to be made.[9] Jamieson and Regan concluded that although scientific

study may have many benefits which will accrue to the cetacea themselves, the morality of these benefits depends 'on the means used to secure them. And no benefits are morally to be allowed if they are obtained at the price of violating individual rights.'[10]

7.10 Sir Sydney Frost, in his report on whales and whaling, decided that any interference with cetacea required strong justification on the grounds that it was either 'essential or unavoidable'. In considering whether humans should use cetacea, he took into account the suffering that might occur as a result of that use and the effect of the possible high intelligence of cetacea on their propensity to suffer. He went on to recommend that:

> 'the taking or killing of any cetacea - whether intentionally for scientific, display or other purposes, or incidentally such as in fishing or shark netting operations - should be carefully scrutinised to ensure that it is either essential or unavoidable.'[11]

7.11 The Frost Report did not define 'essential' or 'unavoidable'; nor did it consider separately the issue of oceanaria and the ethics of keeping cetacea in captivity. The Whale Protection Act 1980, which was passed in direct response to the Frost Report, currently sanctions the existence of oceanaria, subject to certain conditions under Section 11 (1) (a) of the Act.

7.12 In evidence to the Frost Inquiry, Singer stated:

> 'If a being is capable of suffering, any suffering it might experience as a result of our actions must count in our ethical deliberations irrespective of whether the being is a human or non-human animal.'[12]

7.13 That cetacea have the capacity to suffer is unequivocal. As mammals they have 'the nervous apparatus which in human beings is known to mediate the sensation of pain'.[13]

7.14 The fact that cetacea undergo some suffering in captivity is not of itself an overriding factor in determining whether cetacea should be held in captivity. All animals, including human beings, suffer to a varying extent in their natural environment and it would be inconceivable for animals not to suffer at times in captivity. Rather, it is the nature and extent of suffering which should be taken into account in deciding whether to keep particular species of animals in captivity.

7.15 Empirical data compiled overseas on effects of captivity on cetacea have shown numerous cases of stress, high mortality, reduced longevity and breeding problems. It is also undeniable that cetacea suffer varying degrees of stress and trauma during capture.

7.16 The Frost Report was inconclusive about the level of cetacean intelligence and the extent to which this affected suffering. After discussing the various views on cetacean intelligence[14] it stated that:

> 'on the neuro-anatomical evidence, the Inquiry is unable to make the assumption of a potential for high intelligence in the whale. But we are persuaded by the evidence submitted to us that the issue remains open and there is a real possibility that such a potential exists and that, accordingly, allowance for it should be made in man's attitude to whales.
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> Certain whale species, particularly some dolphin species and the killer whale, give evidence of advanced behavioural activities. It is from these behavioural studies that scientists have endeavoured to draw parallels for other whale species. Granted that many

> assumptions have been made, nevertheless it is not unreasonable to conclude that cetacea give evidence of levels of behaviour that would seem to be associated with a level of brain development and activity of some sophistication.'[15]

7.17 Assessments of cetacean intelligence have placed them in a range of categories from chimpanzees and baboons to domesticated animals such as dogs and pigs[16] to land-based mammals of high intelligence such as apes and humans.[17] It was contended that studies indicated a brain capacity of a five year old human[18] while others considered that the large brain was merely an evolutionary response to an aquatic environment.[19] Behavioural sophistication was, on one hand, argued as being a reason for concluding that cetacea had a capacity for a high level of suffering while, on the other hand, it was used to argue for a greater degree of adaptability and therefore suitability for captivity.

7.18 Short has commented that:

> '... encephalization - the relative size of the brain in relation to the rest of the body - is a fundamental trait that is a direct measure of an animal's information processing capacity, and hence is directly correlated with intelligence. The highest grades of encephalization are shared by humans, dolphins and killer whales. Next comes the apes and monkeys, whose degree of encephalization is twice that of "average" mammals like deer, or wolves, which are on a par with lemurs, and with crows. Encephalization would seem to reflect a number of different intelligences, and indicate the animal's knowledge of reality in relation to the information received by the brain. The large size of the human brain can be attributed to our linguistic ability, which gives us a new dimension to reality. If we are genuinely concerned about minimizing the pain and suffering of animals in captivity, it would seem essential to take encephalization into account ...'[20]

7.19 It has been pointed out to the Committee that captive cetacea are entitled to special consideration not only because of their possible high intelligence but also because of various behavioural characteristics, such as their long distance swimming, their sonar signals and their complicated social interactions; characteristics which do not lend themselves to confinement in a relatively small pool.

7.20 It has been inferred from these factors that the reaction of cetacea to captivity would be similar to those of humans. Thus, morally, the forcible separation of cetacea from their families and their confinement for life requires the same justification as this sort of action does in human situations. There are, however, dangers in using anthropomorphic arguments because different species do not necessarily respond to a stimulus in the same way, irrespective of the level of intelligence.

7.21 The Committee is unaware of any recent research that throws more light on the nature and level of cetacean intelligence than the research available to Sir Sydney Frost during his inquiry. It agrees with the views expressed in the Frost Report and, in view of the possibility that cetacea have a high level of intelligence, they should be given the benefit in decisions on their captivity. They should, therefore, not be subjected to the possibility of deprivation or suffering which conditions and quality of life in captivity might occasion.