

Killer whale held in Miami Seaquarium recommended for endangered species status

January 28 2014

The federal government wants Lolita - the orca snared 44 years ago in Penn Cove by whale hunters who sold her to a Florida aquarium - protected under the Endangered Species Act.

The National Oceanic and Atmospheric Administration on Friday reversed itself and recommended the killer whale held by the Miami Seaquarium be governed by the same law that protects Puget Sound's wild southern resident [killer whales](#).

The move could have implications for other [endangered species](#) held by zoos and aquariums and almost certainly will lead to a re-evaluation of the conditions of Lolita's captivity, which activists have complained about for years.

But it's not clear how or if this will affect the decades-long campaign to have the former member of L pod returned to Washington.

Howard Garrett of Orca Network, which has led the charge for Lolita's release, said that killer whales are such social animals he can't see how NOAA would allow an endangered female orca to remain isolated from other southern residents.

"I think this is a very huge first step in the fantastic adventure of returning her to her home waters," Garrett said. "You can't put an endangered species into a circus act."

Miami Seaquarium, in a statement, disagreed, pointing out that NOAA thus far maintains that releasing the whale into the wild after 40 years "has the potential to injure or kill not only the particular animal, but also the wild populations of that same species."

Lynne Barre, branch chief for protected resources at the National Marine Fisheries Service, acknowledged that the agency's proposal currently states that reintroducing Lolita back into the wild would be considered a violation of the ESA.

But she said the agency will accept public comment about the proposal until March 28, and then will start a months-long evaluation of just what coverage under the Act would mean.

"We won't really have an answer to those kinds of questions until we do a full analysis," Barre said.

What's clear, Barre said, is the decision is part of a trend within federal resource agencies to rethink the way the government oversees captive [endangered animals](#), from sturgeon to elephants, sawfish and monk seals.

Already this year, the U.S. Fish and Wildlife Service moved to protect captive chimpanzees under the ESA. That proposal recommended institutions relying on the primates for research be required to get permits that show the animals' captivity helped enhance or restore wild populations.

"It does raise some of larger questions about overall consideration of captive animals under the ESA," Barre said. "We are looking, along with Fish and Wildlife and our general counsel and headquarters, at how we handle that."

The battle over Lolita has raged for nearly 44 years, since whale

wranglers in 1970 herded 60 squeaking Puget Sound orcas into a 3-acre net pen. The men loaded seven of the whales onto trucks and transported them to marine parks.

Lolita, presumed to be about 6 years old at the time, wound up in Miami and became a rallying symbol for orca activists who spent decades decrying whale captivity. Through the years, Washington governors and senators and newspaper columnists have urged the Florida aquarium to bring her back.

"We keep hoping that she will live long enough to come and rejoin her pod - or at least get back to Northwest waters," said Olympia's Karen Ellick, who witnessed a whale roundup in south Puget Sound in 1976.

Killer whales in the wild can live about as long as humans.

It was Ellick who, in 2011, joined with the Animal Legal Defense Fund and others to sue the [federal government](#) for excluding Lolita from the protections of the endangered species. NOAA had determined in 2005 that the number of southern residents was plummeting so quickly the animals needed protection, but didn't include Lolita.

Since the ESA makes it illegal to "harass, harm, pursue, shoot, wound, kill, trap, capture, or collect" an animal under its protection, the groups argued that keeping Lolita alone in a small tank thousands of miles from her pod mates violated the ESA.

Ellick lost the suit, but it opened the door for NOAA to reconsider its decision.

Barre said that Lolita's living conditions are covered by the U.S. Department of Agriculture and the Miami Seaquarium maintains that it has far exceeded that agency's regulations. Animal-rights groups have a

lawsuit pending in federal court in Miami challenging those claims.

Barre conceded that while the Agriculture Department will continue to be responsible for overseeing Lolita's conditions, an endangered listing could require a new look at whether her living conditions - and the rules governing them - are adequate for an endangered species.

"She's the only orca in America kept without a companion," said Jenni James, a litigation fellow with the animal legal fund.

Seaquarium officials declined to answer any questions.

Garret and other orca activists don't dispute that after decades in a tank where she didn't hunt for food or swim 100 miles a day, Lolita is not ready for the wild. They admit she might never be. But they say they've developed detailed plans for a far larger net pen in Washington waters that would allow Lolita to see and communicate with other family members.

"We know there will be more court battles," Garret said. "It could still take years, but she's healthy, very energetic and responsive. I have high confidence that this is a significant step to her being reimmersed here."

Barre said the agency has until January 2015 to decide if it will finalize Lolita's ESA protections. But it's likely that even if the agency makes that decision, it will take longer before all the questions are resolved about what that means for where and how she lives.

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HOW TO COMMENT

NOAA Fisheries is seeking public comment on this proposal by March

28.

Use the following identification number: NOAA-NMFS-2013-0056.

For electronic submissions, go to www.regulations.gov/#!docketDetail+NOAA-NMFS-2013-0056 and click Comment Now!

Submit comments by mail to Protected Resources Division, NMFS,
West Coast Region, Protected Resources Division, 7600 Sand Point Way
N.E., Bldg. 1, Seattle, Washington 98115 Attn: Lynne Barre, Branch
Chief

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SUPPORTING DOCUMENTS:

www.westcoast.fisheries.noaa.gov/protected-species/marine-mammals/killer-whale/lolita-petition.html

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Citation: Killer whale held in Miami Seaquarium recommended for endangered species status (2014, January 28) retrieved 20 March 2024 from <https://phys.org/news/2014-01-killer-whale-held-miami-seaquarium.html>

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