

## Why We Fight for Nonhuman Rights: Sk'aliCh'elh-tenaut's Story

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### PART 1

Sometime between 1964 and 1967, as the US enters the Vietnam War and the Civil Rights Movement slowly, haltingly bends the moral arc of the universe towards [justice](#), a baby orca slips from her mother's body into the Salish Sea off the coast of Washington State. She is a strong swimmer already, staying at her mother's side, nursing and touching and communicating as she is welcomed into her mother's family. As the days and years pass, she continues to swim with her mother, expanding her repertoire of her pod's unique dialect, which she's been hearing since she was in utero. She learns to hunt and eat the Chinook salmon comprising the majority of her diet. She spyhops, frolics, and plays with other young orcas in her pod. Like all orcas born into the three pods of the Southern Resident orcas, she will stay with her mother for life—or she would have, had she been born just over a decade later.

It will be two decades before people start to track the declining population of [Chinook salmon](#) her family eats, three decades before the salmon will be listed as threatened under the Endangered Species Act, which, at the time of our little orca's birth, is still six to nine years away from being passed by Congress. In the 1960s, the [PCBs](#) and other environmental contaminants that will amplify up the food chain are reaching their peak, concentrating in the blubber of the orcas and in the fatty milk the young orca drinks from her mother. These contaminants will threaten the health of her family for decades to come.

But more significantly in the life of our little orca, she has been born into a time of changing public sentiment about members of her species. Since Pliny the Elder described orcas in the first century AD as "[an enormous mass of flesh armed with teeth](#)," most humans, except for some populations of indigenous people, have feared orcas as predatory monsters. Even their latin name, [Orcinus Orca](#), means a barrel-shaped cask of the realms of the dead. Their common name, killer whales, likely came from a mistranslation of "whale killers," since some populations of orcas, who are actually the largest species of dolphin, work together to hunt and kill whales. Even in the years surrounding our little orca's birth, people aboard fishing boats often shoot orcas because they consider them competition for fish. And yet, it is not bullets that threaten our little orca, it is not fear and hatred of her species, but rather, fascination and curiosity and a different sort of desire to dominate.

In November of 1961, just a few years before the birth of our orca, an [adult female orca](#) was feeding alone in a harbor off the coast of California. According to Frank Brocato, head animal collector for Marineland of the Pacific, she was acting erratically, though officials from the Newport Harbor Department stated Wanda, as locals had named her, seemed friendly, and a [reporter](#) for the *Orange County Register* described her as “playing tag” with smaller boats. Marineland employees, including Frank Brocato, captured her during a long and harrowing day in which she repeatedly escaped from their nets and evaded them until she was exhausted.

Her captors transported her to the aquarium, where she smashed her head into the side of the tank. Marineland’s General Manager, [William Monahan](#), said that Wanda’s “mistake” of swimming into Newport Harbor was “one of the greatest things that could ever have happened to us.” Wanda survived less than two days in captivity, refusing all food offered to her. In Brocato’s [words](#), she “went crazy. She started swimming at high speed around the tank, striking her body repeatedly. Finally, she convulsed and died.”

A [necropsy](#) revealed that Wanda was in poor health, with signs of heart disease, worn teeth, parasitic worms, and a previous jaw fracture. Although the pathologists reported her death to be due to pneumonia and gastroenteritis, they did conclude that “the great stress experienced by the animal during capture and confinement contributed to the pathological condition.”

Brocato had been attempting to catch an orca since the [1950s](#), and his desire to succeed redoubled after thousands of people watched Wanda’s capture and came to see her during her short life in [captivity](#). In September of 1962, he and his assistant came across a male and female orca in the waters off the coast of Washington. As the female orca pursued a porpoise who was taking refuge behind Brocato’s collection boat, they managed to lasso her. She dove in an attempt to escape the lasso and swam to the end of the tether, where she began to scream. The male, hearing her calls, swam to her, and together they began charging towards the 40-foot boat, hitting their flukes against it. Brocato reached for his rifle and shot. He hit the male once before the orca swam away, but the tethered female was unable to escape. It took ten shots to kill her. Brocato towed her back to shore where she was weighed and measured. The orca—who earlier that day had been swimming with her companion, hunting in the waters of the Salish Sea—was dead, her body destined for a dog food rendering plant, but not before Brocato removed her teeth as souvenirs.

It’s possible our little orca has already been born when an artist, commissioned by the Vancouver Aquarium to kill an orca as a model for a life-sized [sculpture](#), harpoons a male orca off the coast of British Columbia in 1964. The orca is young, only about five to seven years old. Members of his pod rush to his aid, lifting him above the surface to save him from drowning as he thrashes and screams. The sculptor races to his captive and begins to shoot him with a rifle, but when even this fails to kill the young orca, the aquarium director Murray Newman decides to tow him by his harpoon line sixteen hours through the sea to Vancouver.

Believing the young male orca to be a female, the Vancouver Aquarium names him [Moby Doll](#) and sets him up in a sea pen in the flooded Burrard Drydocks before transferring him to the Jericho Army Base. He becomes an international sensation as people rush to see him, including scientists who start for the first time to listen to the calls of an orca. Years after his death, scientists will use recordings of this young orca calling out to his family to determine he was a member of [J pod](#), one of the three pods that make up the Southern Resident orcas, which means he, too, would have stayed with his mother for life. They note he is docile and friendly. For fifty-five days, he refuses the various foods offered to him until he finally begins to eat dead fish, twenty-two days before he himself is dead.

After the young orca's death decades before his natural lifespan, separated from his family, after weeks of starvation, and a skin disease brought on by low salinity waters, how does the Vancouver Aquarium justify his capture? According to [Newman](#), "I love that whale. I think that capturing it was the best thing I ever did."

Meanwhile, a man named Ted Griffin is failing in his attempts to catch an orca for display at his small Seattle aquarium. Then, in 1965, a large male orca from a pod of Northern Residents becomes entangled in fishing nets off the coast of Namu, British Columbia, reportedly after entering the nets to [help](#) an orca calf who is trapped in them. The calf escapes, but the male orca remains and changes the trajectory of Ted Griffin's life, which is now on a direct collision course with that of our little orca.

Griffin raises \$8000 to buy the orca, whom he names Namu and tows for nineteen days in a sea pen back to Seattle. An adult female and younger orcas [follow](#) his sea pen for miles. As members of the Northern Resident orcas, she is likely his mother, the younger orcas his siblings, who, without Griffin, would have been Namu's constant companions for life.

Griffin is obsessed with Namu, who mimics Griffin's squeaks and, as a social being, seeks out his company. Back in Seattle, Griffin trains Namu, rides on his back, and yes, changes the way people view orcas. By 1966, orcas are no longer dangerous monsters to be shot; they are gentle and curious and form close bonds with those around them. All of this is clear by the time Namu [dies](#) less than a year into his captivity, and one more thing is clear by then, too—an aquarium with an orca on display can make a lot of money on ticket sales.

Even before the death of Namu, [Griffin's](#) capture team succeeds in harpooning an orca mother, chasing her and her calf for seventeen hours before netting them. After the mother dies the following day, Griffin takes her orphaned calf—a female he initially places in Namu's enclosure with him. When she becomes aggressive towards Namu and Griffin, he sells her to SeaWorld for about \$70,000, where she becomes the first of many Shamus until her death six years later just a few months after she severely injures a trainer. Griffin has partnered with Don Goldsberry, and until 1972, when Griffin sells his part of the whale capture business to Goldsberry, the two men capture about [thirty](#) orcas in the Salish Sea and sell them to aquariums. Before the end of orca captures off the coast of Washington in 1976, over 50 orcas, mostly babies from the Southern Resident pods, are taken from their families and sold into captivity. Including, in 1968, an approximately three-year-old male who is bought and transferred to a small tank at the Miami Seaquarium, where his captors call him Hugo. Including, in 1970, our little orca, who will join him there.

On August 8, 1970, the three pods of the Southern Resident orcas have come together for a superpod—usually a time of joyful reunion for the orcas. But on this day, the [whale hunters](#) are waiting for them. By this time, the Southern Resident orcas have been rounded up repeatedly and must know their babies will be taken, even if most of the orcas will be released. They know what humans don't yet know, that these babies are meant to stay with their mothers for life. And so, they try to save their babies. They try to flee the boats and the spotter planes and the explosives being tossed into the sea around them, but in the end, an estimated eighty orcas, all three pods of the Southern Residents, are forced into Penn Cove, trapped there by nets.

The adults try to keep their babies close in the chaos—two of our little orca's family members [hold](#) her between their bodies, but it is not enough. The hunters push them apart with sticks, string nets between them. The babies and families call to each other in panic as they are [separated](#). Although many of the adults are set free, they do not leave their babies, not while they can still see them on the other side of the nets, not while they can still call to them, not for the ten days they are trapped in Penn Cove. The adults and calves spyhop, raising their bodies up out of the water to catch glimpses of each other. The sound of their cries carries through the air.

Lyla Snover and her children hear the cries. In the film [Lolita, Slave to Entertainment](#), she will later recall: “What you really felt were the cries of... both the small ones and the adult ones... And I remember, one day, I stopped over there right close to them with my children that were very small at the time, and they kept saying: ‘Why are they crying? They’re crying.’ It just broke your heart... You just kept wanting them to let them go.”

Four babies become entangled and drown, possibly after [residents](#) of Whidbey Island can no longer stomach the orcas’ screams and cut one of the nets at night. Griffin and Goldsberry, wanting to avoid negative publicity, order the divers working on the capture team to slit open the babies’ bellies, fill them with rocks, attach anchors to their tails and sink them. In the days before they open the nets to release the rest of the orcas, a mother orca becomes entangled and [drowns](#) in what witnesses say is her frantic attempt to reach her baby.

As our little orca is lifted out of the waters, her family has come as close to the dock as they can, still calling to her as she calls to them. Eighteen-year-old diver John Crowe, tempted by the excitement of capturing orcas, had not realized he would have to slit open dead babies to fill them with rocks or work amidst the distressed calls of the family members he helps to separate. Years later, he will tell his story first in the documentary *The Killer Whale People*, and later in [Blackfish](#). “[I] lost it. I mean I just started crying. I didn’t stop working, but I—you know, I just couldn’t handle it. It’s like kidnapping a little kid away from her mother... It’s the worst thing I can think of... this is the worst thing that I’ve ever done, is hunt that whale.”

In the end, Griffin and Goldsberry take seven calves from their families in addition to a less than one-year-old calf found stranded on August 8th, likely as a result of the roundup. After transporting them to a nearby holding facility, they sell them to [aquariums](#) around the world. One goes to England, though he will return to the United States before his death in fifteen years. Two go to Japan and will both be dead in less than four years. One goes to France and will be dead in three and a half years. Two of the calves are only two years old—one will go to Australia, one to Texas. Neither will survive a year. The little stranded calf will go to Germany and she, too, will be dead in a year. And our little orca is sold for \$20,000 to the Miami Seaquarium.

Jesse White, the veterinarian who chooses her to be Hugo’s companion, names her [Tokitae](#)—a Coast Salish greeting meaning “nice day, pretty colors.” It is a name researchers and advocates will continue to use for years, until decades from now [Lummi Nation](#) names her Sk’aliCh’elh-tenaut as they work to bring her home to the Salish Sea. She will be called neither at the Miami Seaquarium, where she is known as “Lolita,” a name that has come to [mean](#) “a young girl who is sexually attractive to older men” after the title character in Nabokov’s book about a pedophile. But the original meaning of Lolita stems from the diminutive of Lola, from the Spanish *dolores*, the plural of pain, ache, sorrow, grief, suffering, and the decades to come will be full of these.

In the smallest orca tank in North America, our little orca will grow and, against all odds, survive. The truth is, our little orca, who is no longer so little, is also not ours. She never has been. More and more people will recognize this truth as the years pass. She will have advocates who will protest her captivity, upend their lives to try to win her freedom, release films featuring her plight, file court case after court case on her behalf. Decades from now, at a gathering of cetacean advocates, researchers and scientists, the spark of an idea will lead to the founding of the [Whale Sanctuary Project](#), shifting the paradigm of what is possible for the lives of cetaceans in captivity. Over half a century since she was torn from her family in Penn Cove, the question remains of who will prevail—those who believe she is property, a thing, a commodity, or those who believe she is someone with autonomy and self-awareness, and the right, just maybe, to slip once again into the waters of the Salish Sea?

## PART 2

When Sk'aliCh'elh-tenaut arrives at the Miami Seaquarium, a month and a half after being torn from her family in the Penn Cove capture, she is desolate. Pat Sykes—a young show assistant—will later [recount](#) Sk'aliCh'elh-tenaut's first days in Miami: “She had a very hard time—she just barely floated. The skin on her back cracked and bled from the sun and wind exposure. She wouldn't eat the diet of frozen herring. At night she cried.”

For eight months, she is kept separate from the Miami Seaquarium's other orca, Hugo, though they call to each other in the shared language of the Southern Resident community to which they both belong. Hugo is now five years old, and two years have passed since he was taken from his mother and family in the Salish Sea, but he has not adjusted to life in captivity. He never will. He rams his head repeatedly into the side of his tank, a behavior he will continue for the rest of his life. During the time he and Sk'aliCh'elh-tenaut are kept separate, he breaks through the viewing window of his enclosure, severing the tip of his [rostrum](#).

Once he and Sk'aliCh'elh-tenaut are brought together in what the Seaquarium calls the “Whale Bowl,” Hugo's personality changes, and he starts to exhibit aggression towards his trainers. With the exception of a temporary retirement for Hugo due to his aggression, he and Sk'aliCh'elh-tenaut will perform as many as four shows a day until he dies in March of 1980 from a [brain hemorrhage](#) after years of ramming his head into his tank. At the time of his death, he is fifteen years old, just half the average [life expectancy](#) of male orcas in the wild, some of whom have been known to live into their fifties.

Although the Miami Seaquarium announces that Sk'aliCh'elh-tenaut shows no signs of mourning her orca companion, a [study](#) of her behavior before and after Hugo's death, which will be published in 1986, reports that she spends more time swimming at night rather than her previous floating at the surface with respiration indicative of sleep. And during the day, she spends significantly more time submerged at the bottom of her tank. The study's authors describe her behavior as “not unlike bereavement.” This is a brave statement for 1986. The scientific recognition of grief in nonhuman animals is not yet widely accepted as it will be decades later. The world has not yet watched a mother orca carry her dead baby's body for seventeen days over a thousand miles, which in 2018 will bring an orca's grief onto [primetime](#) news and social media feeds. Relatively few people heard the cries of Sk'aliCh'elh-tenaut and her family as they were separated in 1970. Fewer people still see Sk'aliCh'elh-tenaut floating alone on the bottom of her tank in 1980.

The decades following Hugo's death will be bereft of the companionship of other orcas, though she continues to [call](#) out to them.

But we are jumping ahead in our story. What is happening outside of the Whale Bowl in the decade Sk'aliCh'elh-tenaut swims with Hugo around and around, performing daily shows for crowds of people under the hot Miami sun?

The changing tides dredge up the [bodies](#) of drowned orca calves in the months after the Penn Cove roundup—the ones Ted Griffin and Don Goldsberry instructed divers to fill with rocks. One still has an anchor attached to his tail. And with the discovery of their mutilated bodies, with the memory of the orcas' cries still fresh in the minds of many residents, another tide begins to turn, and public opinion shifts against the capture of orcas in the Salish Sea.

In 1971, [Washington State](#) begins requiring permits of \$1000 per orca as well as regulating capture methods and placing size limitations on the orcas captured. In 1972, Congress passes the [Marine Mammal](#)

[Protection Act](#) (MMPA), which prohibits the “take” of marine mammals, including orcas. “Take” is defined as the successful or attempted harassment, hunting, killing or capturing of a marine mammal. Although the MMPA makes an exception for taking marine mammals for the purpose of exhibition, the days of hunting orcas off the coast of Washington are rapidly coming to an end.

In 1976, Sk’aliCh’elh-tenaut’s captor, Goldsberry, is still at work in the Salish Sea, hunting orcas for SeaWorld. Ralph Munro, who at the time is a staff aide to Governor Dan Evans but will later be Secretary of State for Washington, is out sailing when he spots orcas fleeing from Goldsberry’s crew. As he tells the [Seattle Times](#) more than four decades later, “It was gruesome. As they closed the net there was a guy on the back of the boat with a torch, and he was lighting and dropping these explosives as fast as he could light them, boom, boom, boom, the orcas were screaming ... I can still hear them, screaming back and forth... They had parts of the pod inside the net, and parts of the pod outside the net. It was just panic, totally disgusting. Sickening.”

But Ralph Munro doesn’t wait four decades to tell the story of the Budd Inlet capture. He alerts the press right away, and protestors surround the orcas trapped in nets and march to the courthouse where Attorney General Slade Gorton takes SeaWorld to court. The case is dismissed after the state of Washington and SeaWorld reach a [settlement](#) in which SeaWorld agrees to free the remaining orcas from the Budd Inlet capture and never hunt orcas off the coast of Washington again. They don’t stop hunting orcas, but they move their capture operations to Iceland, out of sight of the people they hope will pay to see their orca shows and believe the stories they tell, that the orcas’ lives are better and safer in a tank than in the sea with their families.

By 1976, we have learned a great deal more about the orcas who live in the Salish Sea. Thanks to the work of Canadian marine biologist [Michael Bigg](#), we have learned we can identify individual orcas by the saddle patch markings and dorsal fin shape and scars unique to each individual, including the bullet scars seen on [25%](#) of orcas captured through 1970 off the coast of Washington. We have also learned, through Bigg’s census, which will be continued by Kenneth Balcomb of the [Center for Whale Research](#), that there are far fewer orcas in the Salish Sea than the thousands presumed to swim there, especially among Sk’aliCh’elh-tenaut’s Southern Resident pod and community, comprised not only of L pod, to which she belongs, but also J and K pods.

From 1974 to 1980, as the capture era ends, the [Southern Resident](#) community’s population increases from seventy to eighty-three orcas before decreasing from 1981 to 1984 in the years many of the captured babies would have begun to reach reproductive age. There will be no babies for Sk’aliCh’elh-tenaut, who spends her days performing tricks amid booming rock music and the screams of humans who have paid to see her perform, to swim in circles, to splash them.

Here is what we will learn about orcas in the years to come. We will learn that different populations of orcas have distinct cultures, distinct vocalizations, distinct food and habits. The [Southern Residents](#) live in matrilineal groups within J, K and L pods who share a recent maternal ancestor. Each matrilineal group, composed of a mother, her sons and daughters, and her daughters’ children, stay together for life, rarely spending more than a few hours apart. The matrilineal groups within a pod spend the majority of their time together, but sometimes, all three pods gather together as the Southern Resident J clan in what researchers call a superpod event, like the one happening at the time of the Penn Cove capture.

During a [superpod](#), all three pods come together and line up facing each other. After a time of quiet stillness, they intermingle, vocalize, breach, mate. Observers describe superpods as unmistakably exciting and joyful events for these intensely social, deeply connected beings. Sometimes humans are lucky enough to witness the superpod events, but it’s impossible to know just how many Sk’aliCh’elh-tenaut has missed in the over half a century since the superpod during which she was taken from her family.

Here is what else we will learn.

The [Southern Residents](#)—Sk’aliCh’elh-tenaut’s family—spend 50 to 67% of their time foraging for the fish they eat. Sk’aliCh’elh-tenaut is fed dead fish from a bucket like other captive orcas, most of whom are also given pounds and pounds of gelatin in an attempt to counteract dehydration caused by the inadequate water content of frozen fish. She cannot forage, she cannot echolocate to find her food and hunt her prey to the dark depths of the Salish Sea. She cannot share her food with members of her family. Let’s look at what her family is doing as she floats in her tank and performs two shows a day. Her family spends most of their time under water, between the surface and a depth of 98 feet, but every hour or so, individuals dive deeper than that, and every five hours, they may dive deeper than 490 feet. At about four years old when she was captured, Sk’aliCh’elh-tenaut would have known what it feels like to dive deep—even the 3-year-old orcas in the dive study dove to a mean maximum depth of 440 feet, meaning a 3-year-old orca dives twenty-two times the depth of Sk’aliCh’elh-tenaut’s tank. Her family only very rarely ventures into water less than sixteen feet deep. Sk’aliCh’elh-tenaut’s tank is twenty feet deep at its deepest, less than the length of her body. But the tank is called the Whale Bowl for a reason—the depth is not uniform and the tank is only twelve feet deep as it slopes towards its edge.

Her family swims an average of [seventy-five miles](#) a day, with an average speed of eight miles per hour, though they can swim as fast as thirty miles per hour. Sk’aliCh’elh-tenaut’s tank—the smallest and oldest orca tank in North America—is eighty by sixty feet, if you ignore the concrete island obstructing the middle, as APHIS repeatedly does when renewing the Miami Seaquarium’s license. If you don’t ignore the [concrete island](#), which spans forty-five feet, with approximately ten foot openings between each end and the tank wall, the practical width is reduced to thirty-five feet, making Sk’aliCh’elh-tenaut’s tank illegal by even the inadequate Animal Welfare Act (AWA) requirements.

Her tank is less than four of her body lengths long, less than 1/66th of a mile, approximately 1/4950th of the average distance her family swims each day. To swim the length of her tank, Sk’aliCh’elh-tenaut needs at most [five small flicks](#) of her tail flukes. If she swam as far as her family, she would have to swim around the perimeter of her tank over 1,800 times a day. That is, if the gates between the island and the sides of the tank are open and she has access to the full circumference of her small enclosure.

In former SeaWorld trainer [John Hargrove](#)’s deposition, he describes his reaction to seeing Sk’aliCh’elh-tenaut’s tank:

“Walking into Lolita’s stadium I was shocked by the size and shallow depth of her tank, and the absolute absence of any enrichment to her enclosure. As discussed in this report, I have worked with orcas at three leading facilities and observed the animals’ poor welfare as a result of their too-small tanks and conditions of captivity. Yet Lolita’s tank at Miami Seaquarium is without question the smallest and most barren I have ever seen an orca forced to live in.”

But it is not just depth and distance that have been taken from her. We know already if Sk’aliCh’elh-tenaut were swimming in the Salish Sea, she would be with her mother and the rest of her family, and with any children who may have been hers in a different life. And what would she see? She would see her family, but she would also see fish and crabs and seagrasses and rocks. She would see other marine mammals and the different depths and textures of the sea floor instead of the monotony of sunlit concrete, broken only by interactions with her trainers and the crowds of people attending her performances. Her eyes would not be damaged by sun and chlorine, she would not need to keep one eye closed during performances or receive eye drops to treat her painful eye condition [pterygium](#), first diagnosed in the 1980s—a condition that causes inflammation, foreign body sensation, dryness and itchiness in the eye. What would she feel? She would feel the changing temperatures of the water rushing past her, the touch of seaweed. Her environment would be tactile, varied. She would not scrape her flukes against the

shallow concrete bottom of her tank and develop rubs and abrasions on her body. She would feel the frequent touch of her family members against her highly innervated skin, instead of the tooth rakes she sustains from the Pacific White-Sided Dolphins the Miami Seaquarium claims are an appropriate replacement for the companionship of other orcas. Instead, in her tank, the dolphins harass her. According to the animal behavioral records, she sustains frequent rakes, in which the dolphins cut her with their teeth, causing bleeding and scarring and necessitating the use of antibiotics.

In addition to the animal records, we again have the observations of [John Hargrove](#). In just the one morning he observes her, he sees the dolphins harassing her numerous times while she shows obvious signs of distress and attempts to tuck her pectoral flippers and tail flukes to protect them from the dolphins. At times, she lashes out, chasing the dolphins open-mouthed with teeth showing. She is not part of an orca community that hunts dolphins, and yet, at least one dolphin over her years of captivity is found dead in her tank of blunt force [trauma](#). According to the [AWA](#), she is supposed to be housed with at least one other orca or with a compatible companion of a biologically related species. The regulations go on to say, “However, marine mammals that are not compatible must not be housed in the same enclosure. Marine mammals must not be housed near other animals that cause them unreasonable stress or discomfort or interfere with their good health.”

What would Sk’aliCh’elh-tenaut hear, aside from the sounds of the sea, if she lived with her pod as companions instead of dolphins? We have learned that orcas have complex [vocalizations](#), consisting of echolocation clicks, whistles, and pulsed calls. They use discrete pulsed calls to stay in contact with other pod members, even when they are out of sight of each other, and although clans share many calls, there are others which are unique to a specific pod. In 2002, this fact helps scientists identify the pod of [Springer](#), a Northern Resident orphan found four hundred miles away from her family. After months of effort, she is transported north and reunited with her extended family. Nearly two decades after her reunion with her pod, she continues to swim with her family, along with two calves of her own.

Newborn orca calves already share a number of their pod’s [calls](#), though their repertoire expands as they learn from their mothers and podmates. Sk’aliCh’elh-tenaut, in the years she swam with her mother, learned the dialect unique to L pod. According to *A Puget Sound Orca in Captivity*, Kenneth Balcomb of the Center for Whale Research repeatedly requests and even offers money to the Miami Seaquarium to be allowed to set up acoustic contact between Sk’aliCh’elh-tenaut and her family. Although his requests are denied each time, in 1996 Dateline NBC plays Balcomb’s recording of L Pod greeting each other to Sk’aliCh’elh-tenaut. As we can see in the [footage](#) of this moment, Sk’aliCh’elh-tenaut rises up out of the water and tilts her head close to the sounds of her family, more than a quarter century after she last saw or heard them. Since then, another quarter century has passed.

What is life like for Sk’aliCh’elh-tenaut in the smallest orca tank in North America, as the only orca in the United States without another orca companion? As Ric O’Barry, dolphin trainer turned activist, explains in *Liberating Lolita*, “When [orcas] get together, they get together for life. We get together for birthdays and Christmas and stuff, they get together for life. And they live in a world of sound. So when we capture them like Lolita, we take away from them the two most important aspects of their life—the world of sound and their family.”

Springer swims with her children, answering their calls as they answer hers. She has a constant acoustic reminder she is no longer alone like she was in the hard months of separation from her pod. But no one answers Sk’aliCh’elh-tenaut’s calls, and the only sounds she hears every day are the planes flying overhead, the stomping of feet on the stands surrounding her tank, the loud rock music accompanying her two performances, and the screams of the people who have bought tickets to watch her do tricks—people who believe the Miami Seaquarium’s claims that Sk’aliCh’elh-tenaut is happy here in her concrete tank, three thousand miles away from the sounds and touch of her family and the vast waters of the Salish Sea.



### PART 3

Sk'aliCh'elh-tenaut has lived at the Miami Seaquarium, in the smallest and oldest orca tank in North America, since she was taken from her family in the Salish Sea over half a century ago. More than four decades have passed since she has seen another orca.

While Sk'aliCh'elh-tenaut shares almost no lived experience with her family, who live in a tight-knit community and swim vast distances, she does still have much in common with them. Her [brain](#), like theirs, is 2.2 to 2.3 times bigger than expected for an animal of her size. A human brain is seven times the expected size—this number is called the encephalization quotient (EQ). Great apes and elephants have an EQ similar to orcas, though other members of the dolphin family have EQs as high as 5. [Lori Marino](#), an internationally renowned neuroscientist specializing in the evolution of brains and intelligence in dolphins and whales, explains that an oversized brain is a good indicator of cognitive capacity and behavioral complexity. The vast energy requirements of brains would preclude them from evolving to be larger than necessary—which is to say, in order to justify the energy needed, brains that are larger than expected relative to body size must be serving some function beyond basic survival and intelligence.

But EQ is not the only indicator of intelligence, especially since it is nonlinear and tends to underestimate the cognitive abilities in particularly large animals such as orcas—because their body size is so large already, to have a brain many times the expected size for their body mass would be physically impossible. And so, we can look to some of the individual parts of the brain for additional clues. For example, the complexity and depth of the folds of the neocortex, which give brains their wrinkled appearance, allow a brain to have a far greater surface area than would otherwise fit inside a skull. This complexity is an indicator of high level and abstract thinking, and the folds in the cerebral cortex of orcas are deeper and more elaborate than those found in humans, comprising a greater percentage of their brains than ours. Unlike human brains, the brains of orcas include a paralimbic lobe, which is uniquely well-developed in cetaceans, and connects the limbic system—the emotional and memory-forming part of the brain—to the neocortex. What does this connection mean? It means we don't need to be surprised orcas spend their lives together, cry when separated, keep injured podmates afloat, stay close to [stranded](#) family members even when they risk stranding themselves, and grieve the loss of one another. It means we don't need to be surprised that when the mother orca, Tahlequah, carries her dead baby for seventeen days over a thousand miles, her eight-year-old son and other members of [J pod](#) help keep her baby's body afloat, even [feeding](#) Tahlequah during her mourning. Given orcas' lifelong bonds, displays of grief and helping behaviors, and the highly developed paralimbic lobe, maybe the question we need to ask is not whether orcas are capable of human depths of emotion and social connection, but whether we are capable of understanding the depths of theirs.

Of course Sk'aliCh'elh-tenaut is bored and lonely in a tank with an intelligent brain like hers, wired for social connection. Of course she is bored in a tiny, featureless tank where the only enrichment provided to her is a wetsuit to play with, a dribble from a hose, and interactions with her trainers. Deprived of currents and variation, she [floats](#) listlessly at the inflow valve of her tiny tank. Even her shows fail to break the monotony of her day—a series of memorized actions she performs by rote, often not needing to wait for her trainers' signals to know what comes next.

Every day is the same. She is bored. She is lonely. We know these things because we know evolution does not reverse itself in a single individual, even over half a century of deprivation. We know she is bored because orcas evolved to travel vast distances, to echolocate and capture their food, to dive deep, to solve problems and challenges, to have variety in their lives, to have choice. And we know she is lonely because orcas evolved to be social beings, with the language and the brain indicative of deep connections to others of their species. In the life that should have been hers, she has close, lifelong relationships with her mother, her pod. She has children who swim by her side for the rest of her life, grandchildren she

helps to mother for decades past her own reproductive years. They are stronger—the [children](#) and [grandchildren](#) she could have had—their survival more likely because she is in their lives. We know Sk’aliCh’elh-tenaut was meant to spend her life with her family, never alone instead of always alone.

It’s not surprising then that captive orcas—even those in larger tanks and with orca companions—exhibit a wide range of unnatural and repetitive behaviors, and that these stereotypes result in serious consequences to their mental and physical health. The most visible evidence is in their teeth.

Sk’aliCh’elh-tenaut does not use her teeth to grab her food, which is thrown into the back of her throat. And yet, unlike the conical teeth of her family in the Salish Sea, which rarely break or even show wear, her teeth are damaged, like the teeth of all twenty-nine captive orcas examined in a [2017 study](#). Their teeth are fractured, missing, worn. We know this not because marine parks share information about the teeth of orcas in their care—they don’t—but because we have opportunistic photographs of their teeth taken as they beg for dead fish. Forty-five percent of the orcas in the study showed moderate coronal wear, while almost a quarter exhibited major to extreme wear. Over twenty percent of all the teeth examined were worn down to or below the gum line.

When the teeth are worn down so far that the pulp is exposed, it creates a risk of infection that can become systemic and fatal. In the last six years SeaWorld has moved away from the modified pulpotomy procedure they and other marine parks have employed when the pulp is exposed, but in the 2017 study, 61.1% of the second and third teeth in the orcas’ lower jaws showed evidence of bore holes. One orca less than three years old had bore holes in 25% of her mandibular teeth, and a six-year-old orca had bore holes in 42% of his. According to [The Orca Project](#), a former SeaWorld trainer describes a pulpotomy as follows: “The whales are conditioned to ‘accept’ the noise, heat, vibration and obvious pain associated with drilling vertically through the tooth column and into the fleshy pulp below. Success is measured by blood spilling out of the hole, in which case it’s apparent the bore is complete.” Since you cannot fill cavities in aquatic animals, the holes remain open and have to be flushed up to three times a day in an attempt to dislodge food and bacteria and prevent infection.

What is happening to captive orcas’ [teeth](#) if their food isn’t the cause of wear and fracture? They are chewing on metal gates, sometimes jaw popping against them as a show of aggression towards an orca on the other side. They are chewing on concrete out of boredom and frustration, and maybe also in an attempt to ease the pain in their ever more damaged teeth.

Thanks to a [court case](#) over Sk’aliCh’elh-tenaut’s captivity, her advocates receive Miami Seaquarium’s animal behavior records for her from 2001-2015, except for year 2005 and year 2007 and year 2008, and a week in June 2015 and all of December 2015, which are missing. What we do know from the records made available is that Sk’aliCh’elh-tenaut is subjected to tooth [drilling](#) more than sixteen times in 2011, while still forced to perform each day.

What other evidence do we have of captive orcas’ boredom and frustration and loneliness, besides the complexity of their brains and their social lives in the wild and the grinding of their teeth? What does their behavior show us?

They float listlessly on the surface of the water—a behavior known as logging—during which they suffer sunburn and are covered in mosquito bites that have led to the [death](#) of two captive orcas from West Nile and St. Louis encephalitis viruses. If they are not logging, they lie on the bottom of their tanks. They spend much of their day still, when in the wild, orcas are constantly in motion. Even when they sleep, wild orcas are still moving together, though more slowly, their breathing often synchronized. Only half of their [brain](#) is asleep at a time since cetaceans are conscious breathers. They have to choose when to take a breath to prevent drowning, so they can never fully sleep. Sk’alCh’elh-tenaut never fully sleeps. She is

always aware of the walls of her tank, the absence of companions. And the only significant choice she can make in her life is to continue to breathe.

What else do captive orcas do that wild ones don't? Some [ram](#) their heads, like Hugo. Some [regurgitate](#) their food. Some [slide out](#) of their pools onto the concrete, as they are taught to do in shows, only they do so repeatedly. An orca [weighs](#) between 3,000 and 12,000 pounds, and the weight of gravity soon begins to crush their inner organs, prompting their bodies to release [myoglobin](#), which damages their kidneys. They swim in circles—what else can they do—often surfacing at the exact same spot in a monotonous, repetitive motion. They head bob and tongue play.

Orcas in captivity exhibit [aggression](#) towards each other that is not seen to the same degree and frequency in the wild; they are part of artificial pods, confined in small spaces with others who do not speak their language, with nowhere for subordinate orcas to escape dominant individuals. And sometimes, after years of frustration and suffering, orcas kill or [injure](#) their trainers—the very people marine parks claim are the orcas' families. There have been no documented cases of an orca ever killing a human in the [wild](#). These abnormal behaviors indicate that, just as in other animals, including mammalian species ranging from mice to humans, impoverished environments such as the ones orcas endure in captivity likely [damage](#) the delicate balance among the structures of their brain. The same sort of harm that leads to stereotypic behavior, depression, anxiety, and poor health in other animals, including humans, can be inferred as an explanation for the physical and mental conditions of captive cetaceans.

Is it any wonder that captive orcas often [die](#) young, despite extensive veterinary care? Some captive orcas die of trauma. Some of twisted intestines or gastric ulcers. Most captive orcas die of pneumonia or other bacterial and fungal infections. These are opportunistic infections that gain purchase in the bodies of stressed orcas who grind their teeth to the point of needing frequent antibiotics, which in turn breed antibiotic-resistant strains of bacteria that infiltrate their lungs and their blood. Their intestinal and lung microbiomes are altered through antibiotics and chemicals in the water and the medications used to treat the fungal overgrowths that follow. Their immune systems are suppressed by the [chronic stress](#) of their captive lives. The wonder is really that Sk'aliCh'elh-tenaut has survived so long in the conditions under which she is forced to live. Clearly the Miami Seaquarium is not the reason for her longevity, with husbandry practices no better than those of SeaWorld, with a tank a fraction of the size of SeaWorld's inadequate tanks.

As reported in [The Seattle Times](#), the Miami Seaquarium argues against the public release of expert reports on Sk'aliCh'elh-tenaut's behavioral records, stating that the records include “highly confidential and highly sensitive information” and that they have an interest in protecting Sk'aliCh'elh-tenaut's “specific medical and highly personal information.” The judge nevertheless orders the reports unsealed, and from marine mammal veterinarian Dr. Pierre Gallego's [report](#), we know the list of medications required to keep Sk'aliCh'elh-tenaut alive in her tiny tank. We know over the years, besides the eye drops she receives to treat her chronic eye condition, Sk'aliCh'elh-tenaut is given the the painkillers tramadol and orajel and a number of medications used to treat gastrointestinal ulcers—sulfasalazine, ranitidine, carafate and rolaids. She also receives the hormones chorulon, megace and regumate, the antifungals fluconazole, voriconazole and terbinafine, and the antibiotics amoxicillin, baytril, metronidazole, cefpodoxime, tobramycin, neomycin, cephalixin, ciprofloxacin, clavamox, and amikacin.



The “whale bowl”...

Throughout her decades of captivity, Sk’aliCh’elh-tenaut’s suffering inspires many people to try to help her. Howard Garrett of the [Orca Network campaigns](#) for her, even moving to Miami for two years to work for her release. [Politicians](#), including Washington Governor Mike Lowry and Secretary of State Ralph Munro, advocate for her return to the Salish Sea. [Celebrities](#) call for her [freedom](#), finance [campaigns](#) to educate people about her plight, and even offer to [buy](#) her from the Miami Seaquarium. School children start a letter-writing campaign to free her, and frequent [protests](#) fill the streets around the Miami Seaquarium.

The hashtag #FreeLolita fills social media, multiple [filmmakers](#) and news [stories](#) over the years [document](#) her [suffering](#) for us to see, and People for the Ethical Treatment of Animals (PETA), the Animal Legal Defense Fund (ALDF), Garrett, and other advocates repeatedly [sue](#) the Miami Seaquarium and the USDA. The lawsuits allege that the USDA rubber-stamps the renewal of Miami Seaquarium’s [license](#) despite its failure to meet Animal Welfare Act (AWA) requirements (as we detail in [Part 2](#)), that the USDA licensed the Miami Seaquarium as an additional site under a new [owner](#) without the required full compliance inspection, and that the Miami Seaquarium [violates](#) the Endangered Species Act (ESA) through her living conditions.

Her advocates do find some success—they win their [petition](#) to have her included in the Endangered Species Act listing of her family, and their case against the USDA for licensing the Miami Seaquarium as an additional site under Palace Entertainment [continues](#) in court. But it is hard to make legal progress on behalf of someone considered *something*. As a 2004 case [ruling](#) states: “We are asked to decide whether the world’s cetaceans have standing to bring suit in their own name under the Endangered Species Act, the Marine Mammal Protection Act, the National Environmental Protection Act, and the Administrative Procedure Act. We hold that cetaceans do not have standing under these statutes.” The court goes on to say that only a legal person—which could mean a [corporation](#), but not a cetacean—is granted standing to sue under the ESA. To try to address Sk’aliCh’elh-tenaut’s suffering in court, the plaintiffs have to prove they have standing to sue on behalf of a legal thing—they have to prove they are harmed by her captivity, because she has no rights in a court of law, and legally speaking, the harm she herself has experienced doesn’t matter.

Even when Sk’aliCh’elh-tenaut is no longer forced to perform with trainers riding on her body following an Occupational Safety and Health Administration (OSHA) [citation](#), this is to protect the trainers, not her.

And when a 2019 USDA [audit](#) finds that after years of rubber-stamped license renewals, the Whale Bowl may not, in fact, meet AWA guidelines as advocates have been saying for years, no action is taken—there is no change for Sk’aliCh’elh-tenaut. There is no urgency to help a piece of property—a thing—especially not when doing so might be a financial hardship to her owners. Sometimes, advocates’ best hope has been in the [code violations](#) in her crumbling tank because a risk that also extends to humans matters more under the law.

2013 brings the release of the documentary [Blackfish](#), which examines the captive life of the orca Tilikum and how the trauma of his experiences in captivity likely led to his killing of three people. The film’s popularity causes public opinion to once again shift in favor of orcas—which it always does the more we learn—and against their captivity in marine parks. The [Blackfish effect](#), as it comes to be known, ultimately leads to SeaWorld ending their captive orca breeding program, moving away from orca performances, and being forced to [pay](#) tens of millions of dollars to their investors for downplaying the effect of the film on their revenue.

The Blackfish effect impacts the legal world, too. California [bans](#) the breeding of orcas and theatrical shows featuring them, Representative Adam Schiff (D-CA), introduces the [Orca Responsibility and Care Advancement Act of 2017](#)—amending the Marine Mammal Protection Act to ban breeding of captive orcas as well as the capture, import or export of orcas for display—and in 2019, Canada [bans](#) cetacean captivity, except for those already held in marine parks. But the news is not good everywhere. As marine mammal scientist Naomi Rose tells [National Geographic](#), “China hasn’t had their Blackfish moment.” Instead, the marine park industry is booming in [China](#), more orcas are being taken from the [wild](#), and a giant orca [breeding](#) facility opens in Zhukai, China in 2017. And of course, the proposed act banning orca captivity in the United States, as well as the successful ban on captive cetaceans in Canada, does not free the cetaceans already living in tanks.

The Orca Responsibility and Care Advancement Act may not seem to offer much recourse to captive orcas in the United States, but it does have an interesting exception to the ban on exports of orcas—if the act passes, orcas may leave the country if they are being relocated to a marine mammal sanctuary. Remember Lori Marino, the neuroscientist studying cognition and intelligence in cetaceans? She understands the suffering of those living in tanks with such intelligent brains, meant to live in deeply connected social worlds. She is unwilling to accept that we will do what we can to prevent this fate for cetaceans in the future, but that it is too late for those already held in captivity. And so she, with the support of cetacean scientists, advocates, and others, founds [The Whale Sanctuary Project](#). Their expansive and credentialed [team](#) envisions an alternative to tanks, a new life for those living in impoverished environments at marine parks. After years of examining the feasibility of seaside sanctuaries, they have chosen a location, in [Port Hilford, Nova Scotia](#), and hope to welcome their first cetaceans at the end of 2022. And through their deep expertise and careful planning, they know their sanctuary will be a model for the other sanctuaries that will come, if only we demand them.

In 2017, the Lummi People, who consider orcas their “relatives beneath the sea,” pass a motion to return Sk’aliCh’elh-tenaut to the Salish Sea, and in 2018 complete a cross-country [totem pole](#) journey from Washington to Florida asking for her freedom. That same summer, Tahlequah gives birth to her baby girl, swims and bonds with her for half an hour before the baby dies. It is this orca mother’s display of deep grief that inspires two members of Lummi Nation, Raynell Morris and Ellie Kinley, to voice their intent, in 2019, to sue the Miami Seaquarium and parent companies under the [Native American Graves Protection and Repatriation Act](#), arguing that Sk’aliCh’elh-tenaut was taken from the Salish Sea without permission half a century ago. Lummi Nation’s legal efforts to bring Sk’aliCh’elh-tenaut home are supported by the [Earth Law Center](#).

The Lummi have also enlisted the help of [Whale Sanctuary Project](#) members Katy and Jeff Foster, who are collaborating with a host of experts, including hydrologists and marine mammal pathologists, to finalize a plan to allow Sk'aliCh'elh-tenaut to return to the Salish Sea. Once granted access to Sk'aliCh'elh-tenaut by the Miami Seaquarium, veterinarians and researchers would test her respiratory and gut microbiomes as well as assess her health in other ways to make sure she is not only healthy enough to be transported to the sea and resist any pathogens she might encounter in her return home, but also that she does not carry any pathogens that could put the Southern Resident orcas or other marine life at risk.

The [sea pen](#) they have designed for her initial transition back into the Salish Sea is an hour-glass-shaped pen, 250 feet by 100 feet, with a depth of 30 feet and a med lift in the middle. This pen would be within a fifteen acre netted-off enclosure. Over time, as she adapts to her new environment and with training—for her benefit, not ticket sales—she would be released into the larger fifteen acres. While a reunion with her family would be a wonderful ultimate outcome, at this time the Lummi want to provide her with a greater quality of life within the Salish Sea without introducing into the struggling Southern Resident population an orca who may no longer be able to hunt efficiently.

The Miami Seaquarium claims this is just another form of captivity, and it's true that Sk'aliCh'elh-tenaut would be fed and provided care. She would not be free as her family is free, but she would be free from forced performances. She would be free from the noises of jet engines overhead, the sounds of rock music blaring, and the vibrations of feet in the stands around her. She would be free from the harassment of her dolphin tankmates, free from the concrete walls that rub her body raw. And she would be free to explore a world that, while not the miles and miles of home range her family swims, would have variation, texture, live fish and crabs, waving seagrasses, changing currents and temperatures in an enclosure many, many times the size of her tiny tank.

The Miami Seaquarium has been promising a new tank for Sk'aliCh'elh-tenaut since 1978. Twenty-three years later, in 2001, they tell the [Sun Sentinel](#) of their plans to build Sk'aliCh'elh-tenaut a tank five times the size of the Whale Bowl: “This project is very real. People have said that we would never spend this kind of money on this and Lolita would never get a new home.” Two decades later, Sk'aliCh'elh-tenaut still lives in the Whale Bowl—the only difference is that it has been renamed the Whale Stadium—and although it is currently closed for construction, it is not for her sake, but rather, as the Miami Seaquarium website [states](#), “The Whale Stadium is currently closed for maintenance and enhancements in the seating and guest entry side of the facility.”

The Miami Seaquarium claims returning Sk'aliCh'elh-tenaut to a sea pen in the Salish Sea is too dangerous, but how safe is her continued life in captivity? What happens when in ever-intensifying hurricane seasons, a hurricane heads straight for the Miami Seaquarium, vulnerable on the tip of the Virginia Key island in the Biscayne Bay? She will be left there, just as she was during [Hurricane Irma](#). There is no contingency plan to move her to safety. And of course, as we have learned, orcas can never really be safe in captivity, even without the threat of hurricanes.

Just before publication of this piece, PETA releases a [USDA routine inspection report](#) for the Miami Seaquarium from June of 2021, finalized on September 22, 2021. Over the course of seventeen pages, the inspector describes a litany of violations threatening the health of marine mammals at the Miami Seaquarium. The violations specific to Sk'aliCh'elh-tenaut include many of the issues advocates have pointed out for decades. According to the inspectors, Sk'aliCh'elh-tenaut has inadequate protection from the sun, her right eye is damaged, and she is forced to look into the sun while interacting with trainers. The water in which she swims is turbid and inspectors cannot see the bottom of the pool, and during the course of repair of a broken pump, Sk'aliCh'elh-tenaut is described as agitated, with eyes showing signs of chlorine injury. The inspectors find the barrier around Sk'aliCh'elh-tenaut's tank inadequate after

witnessing spectators dangling cell phones and even children over the metal bar and ledge around the Whale Bowl.

Over and over throughout the report, the inspectors detail how the recommendations of the attending veterinarian, who was [fired](#) in June, are ignored. The veterinarian opposes adding a mother dolphin and her three-year-old calf to Sk'aliCh'elh-tenaut's tank because of the chasing and aggressive behavior between Sk'aliCh'elh-tenaut and her current Pacific white-sided dolphin tank mates. The Miami Seaquarium has since postponed the move, but had planned to proceed with it over the veterinarian's objections. Inspectors report that the Miami Seaquarium does not keep track of which dolphins are housed with each other. Housing incompatible conspecifics together—a violation of the AWA—has led to dolphin injuries and at least three deaths at the facility in the last several years.

The Miami Seaquarium also ignores the attending veterinarian's advice not to decrease Sk'aliCh'elh-tenaut's daily fish ration by thirty pounds, despite the veterinarian citing concerns for her health, including dehydration. When the attending veterinarian also tells the Miami Seaquarium it is not okay to feed rotten fish to their marine mammals, they seek out a “consulting” veterinarian who tells them it's okay as long as they soak the fish in cold water first. Multiple animals stop eating, have abnormal fecal samples or show other signs of ill health, such as the inflammation found on Sk'aliCh'elh-tenaut's bloodwork following the consumption of the fish, which are fed over the course of eight days. And when the attending veterinarian recommends Sk'aliCh'elh-tenaut not be forced to perform tricks such as head entry dives and fast swims because she has likely injured her jaw on her tank as reported in her medical records on five days from the end of February to the beginning of April, the training curator ignores that recommendation as well.

The Miami Seaquarium continues to [claim](#) they act in the best interest of the animals held within their tanks—the same claim made by marine parks around the world. And yet, in the eight days following the August 10th publication of [Part I](#) of Sk'aliCh'elh-tenaut's story, two-year-old [Ula](#) dies at Loro Parque Zoo in the Canary Islands, and six-year-old [Amaya](#) dies at SeaWorld San Diego.

What else happens in the short span of time in which Ula and Amaya die, as the USDA is finalizing their June inspection report? The Dolphin Company, a Mexican company that operates over thirty [marine parks](#) and bills itself as the “[#1 Dolphin Family in the world](#),” announces it will [buy](#) the Miami Seaquarium and all the nonhuman animals contained within its tanks, expecting the deal to be final by the end of the year. The Dolphin Company has [no plans](#) to free Sk'aliCh'elh-tenaut, though maybe there is a glimmer of hope. As *Business Wire* [reports](#), the “agreement is still subject to certain customary closing conditions related to licensing and lease assignment.” Could the court case involving licensing the Miami Seaquarium under a new owner make Sk'aliCh'elh-tenaut's captivity a liability in a business deal? The USDA has filed a [motion](#) to remand the case back to the USDA, agreeing to perform a full compliance inspection and reissue its decision about licensing the Miami Seaquarium under the AWA. Maybe there is the possibility of sanctuary for her after decades and decades of captivity, but what might her life have been, what might her advocates have been able to achieve in a world in which the law recognized her personhood and right to liberty? If her life did not depend on administrative procedures, but rather on the protection of her own fundamental interests? Would she have been able to return to her family? To birth babies into the sea where she herself was born, to swim with her mother again?

It is true that three thousand miles away her family is struggling in the Salish Sea—dams have blocked the spawning of the Chinook salmon they eat, pollution in the water affects their bodies, including their reproductive health, and boat traffic and navy sonar disrupts their echolocation. There is no doubt, we need to pour vast resources into undoing some of the damage we have perpetrated in order for this population of orcas to survive. The navy needs to stop [sonar testing](#) off the coast of Washington. We need to listen when we hear boats should stay back from a pod with a struggling member or a pregnant orca.

We need to undam rivers and increase the population of Chinook salmon. We need to prevent further pollution from entering the Salish Sea and discover ways to remove contaminants already there. We need to do all of these things, and we need to not forget that Sk'aliCh'elh-tenaut is an individual, a nonhuman person who matters. There is great expense in changing her future, in returning her to the Salish Sea. Even in the meticulous care and research that has gone into the plan to bring her home, there will be unknowns. What we do know is that she is suffering in captivity. There is no other way to describe the existence of captive cetaceans in barren concrete tanks. We need to look at her life and to understand, she deserves a chance at something better, not because she is an endangered species, but because she is a self-aware, social being who has suffered long enough as she waits for us to learn, waits for our opinions to shift, waits for us to understand what deprivation she endures every day.

We have learned so much about orcas in the last half a century since Sk'aliCh'elh-tenaut was taken from the Salish Sea. We have learned that a Southern Resident mama whose baby swims by her side for thirty minutes experiences profound grief at her death. What about the grief of a mother, of her daughter Sk'aliCh'elh-tenaut, at their separation after years of swimming together? Is it possible, as some advocates suspect—but cannot confirm without a DNA sample from Sk'aliCh'elh-tenaut that the Miami Seaquarium refuses to provide—that her mother is still alive—that she is [Ocean Sun](#), an elderly matriarch of L pod thought to be ninety-three years old? What does it mean, if Sk'aliCh'elh-tenaut remembers training cues she hasn't seen in over eight [years](#), what does it mean for what she remembers from her past—the years swimming with her mother, the days of being netted away from her, each trying to reach the other in panic, the terrifying lift into the air, being held in one tank, then taken to Miami, where she hears the calls of another Southern Resident in another tank for almost a year, swims with him for almost a decade before she witnesses his death, the removal of his body by crane, leaving her alone. What does she carry that we can only imagine, watching her float listlessly, seeing her worn teeth as she begs for dead fish?

Sk'aliCh'elh-tenaut's spectators pay to see her perform, they arrive from their homes, their hotels, they buy tickets and snacks and stuffed animal orcas, they cheer and squeal as she swims around her tank, splashing them on command to earn her food. And then they leave. They go home. For over half a century, people have come to see her and then gone about their lives. Children from those early years are grown, have had children, and maybe even grandchildren of their own, as she might have had in another life. Their lives have taken so many different paths, there has been choice in their every day, while Sk'aliCh'elh-tenaut has no choice. Day in and day out, she floats, she performs tricks for her food, she attempts to escape the harassment of her dolphin tank mates, she calls out to other orcas who cannot hear her, cannot answer.

What if it is safer for her to stay? What if she doesn't survive transport or dies in a sea pen in the Salish Sea? What if she lives? What if she feels the rush of kelp against her fins instead of concrete, what if she sees fish darting through the water, crabs skittering across the rocky sea floor beneath her? What if she still has all the human support she needs—she is fed, she receives medical care and training to expand her world—what if she calls out, as she does now, to her family? But what if, after years of silence, what if this time, they answer?

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*The Nonhuman Rights Project (NhRP) is the only civil rights organization in the United States dedicated solely to securing rights for nonhuman animals. Our groundbreaking work challenges an archaic, unjust legal status quo that views and treats all nonhuman animals as "things" with no rights. As with human*



*rights, nonhuman rights are based on fundamental values and principles of justice such as liberty, autonomy, equality, and fairness. All of human history shows that the only way to truly protect human beings' fundamental interests is to recognize their rights. It's no different for nonhuman animals.*