

The Lolita Campaign

A retrospective by Howard Garrett
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Why tell this story?

This history is meant to provide information to help return this captive L pod orca to the waters of her birth, where she was brought into the world by her mother and her family. She learned from them how to be a member of her traditional orca community before her capture in 1970. It's well understood that she needs to be moved, but the problem before us is that for her to return home we'll need to arrive at a consensus among scientific advisors and decision-makers that the move can be done safely, that after 50 years in the same tank it's still not too late for her to ride suspended in a container for a few hours, to be lowered into a seapen in the waters of her youth to be cared for and provided food, medical care, and companionship.

The following is intended as a kind of documentary of events that took place in the course of the Lolita campaign, including prior events involving Keiko, the orca star of *Free Willy*, that informed and motivated our efforts, but are not well known to many people. These accounts will hopefully help readers understand why many observers continue to believe it can't be done safely, and how that belief was crafted by the whale and dolphin captivity industry to prevent the release of their captive performers.

By relying on her behavior, her history and established science to interpret the risks, we've come to appreciate her inherent mental and physical strength, and her capabilities and survival intelligence, to realize that it can be done, not only without harm, but that returning to her native waters would improve her overall health and enhance her life immensely.

An L pod calf is taken away

Lolita, also called Tokitae, and now Sk'aliCh'elh-tenaut, her name given her by the Lummi Nation, is a member of the critically endangered Southern Resident orca community presently numbering 72 whales. She was born into L pod about a year after the traumatic captures in Puget Sound began in 1965. At that time there may have been a hundred or more orcas in her community. Watching trained orcas in tanks had become popular entertainment and a lucrative business, and Southern Resident orcas were the primary source for those performers. At the time no one had studied Washington's resident orcas, or even knew they were a distinct population, so her story before her capture in 1970 is drawn from our current knowledge of her history, Southern Resident orcas, and orca natural history.

After some hours feeling the 400-pound, 8-foot calf nudging her way out of the womb, Tokitae's mom, believed to be L25, "Ocean Sun," corkscrewed for a few seconds to thrust Toki out into the cool water. After a few slaps by her mom and other family members attending the birth, the baby orca quickly learned to breathe safely above the surface. Like all newborn orcas, after 17-18 months in the womb she was well-developed at birth and could soon swim strongly enough to keep up while tucked in tight to her mother's side, pulled along in her slipstream. Her brain was already three times the size of the average adult human brain, so within the first few months she was scanning their undersea world with echolocation clicks and whistling her pod's unique calls, which she'd been hearing and learning already for months from inside her mother's womb. She stayed mostly in her mom's slipstream for the first few months of her life while building her stamina as the pod travelled up to 100 miles every 24 hours. Every few hours she nudged her mom's belly to nurse, prompting Ocean Sun to squirt milk into Toki's curled tongue.

At a year old she was catching her own fish, but for a few more months she continued to nuzzle in for the occasional slurp of milk. She gradually began exploring further from her mother to play with other young whales or to practice foraging together, but she always returned to her mother's side for most of each day, especially when the pod slowed their swimming to line up side-by-side in a resting pattern.

Over the next few years Tokitae grew rapidly. Every day she learned more about her family's traditions and behaviors. She learned how to help find and corral big Chinook salmon toward family members. She learned the routes to find the best fish in shifting tidal currents. Still a juvenile, at age 3 she was several years from sexual maturity, though females in her family held off giving birth until around 12 to 14 years old. She absorbed it all in her vivid memory.

On August 8, 1970, during a gathering of all the Southern Residents, the whales were relentlessly herded and chased into Penn Cove with speedboats, explosives, and aircraft. Once trapped in the cove, nets forced separations of mothers and babies. The entire orca community remained nearby, visibly agitated and loudly vocalizing. Five whales, including four baby whales,

got wrapped in nets and drowned. Four of the carcasses washed up on the shore of Whidbey Island within a few months. Tokitae, then about 12-13 feet in length, was netted and lifted to a flatbed truck for shipment to a holding pen in Seattle. She was one of eight young whales, including one small calf named "Whale" who apparently got separated from her mother during the roundup and was found stranded on Bainbridge Island. All were sold to marine parks around the world.

Six years later, Sea World, which had taken control of the captures, settled in court to avoid publicly taking the blame, agreeing to never again capture orcas in Washington State.

Witnesses say when Tokitae was captured she was about 3-4 years old. She was delivered to the Miami Seaquarium, where she arrived September 24, 1970 to join a young male orca named Hugo, another resident orca from L pod, who had been captured in Puget Sound in February, 1968. As Hugo grew into adolescence he became increasingly aggressive and self-destructive, repeatedly bashing his head against the tank walls and windows until he died of a brain aneurism in 1980.

Free Willy changes attitudes

Note: the following is an account of the events before, during, and after a 1993 meeting at Reino Aventura theme park in Mexico City, in which the park agreed to permit the Center for Whale Research to rehab and release Keiko off Iceland where he was captured. It is relevant to the current efforts to rehab and retire Tokitae in her home by illustrating the research needed to release captive orcas and the intense industry opposition to returning captive whales or dolphins to their natural habitats as well as the resulting struggles to garner scientific or institutional support to accomplish the task, as we're finding now in efforts to retire Tokitae to her native waters.

June, 1993 – The movie *Free Willy* was about a captive orca befriended by a young boy and eventually set free from an abusive marine park to rejoin his family. Perhaps because it was a children's film it portrayed some simple, touching truths about orcas, especially that orcas are highly social, forming family bonds that last their entire lives, and that they call to each other in their families' unique whistles. These points were not missed by the millions of kids who streamed into theaters to see the movie during the summer of 1993, or the millions more who watched the video that winter.

Keiko, the orca star of the movie, had been taken from his mother and family in Iceland in 1979, about two years after his birth. By 1993 he had grown into an almost fully grown teenager, about sixteen years old and over 20 feet long, living in a shallow tank built for dolphins, filled with lukewarm water treated with chlorine and salt. Keiko had stomach ulcers and skin warts, and he was visibly underweight, symptoms of severe stress. Behind his head was a crease where there should have been a thick layer of blubber that gives healthy orcas a lustrous, streamlined

form. Despite his ailments Keiko was a willing actor and showed high interest in the movie-making activities around his pool.

During production of *Free Willy*, the producers of the film joined in efforts to find a better home for him. A friend of the producers called Ken Balcomb, founder and chief scientist at the Center for Whale Research on San Juan Island, Washington, to see if he could help figure out a better living situation for Keiko.

All summer Balcomb researched how to help Keiko. He looked for any case of a whale or dolphin that had been held captive for any length of time and then released, under any circumstances, regardless of the outcome, and listed them all in a document called *Cetacean Releases* (<http://www.orcanetwork.org/Releases.pdf>), including any followup effort to determine how the animal fared in the ocean. Most of the released cetaceans were dolphins released by or escaped from the US Navy. He also searched the relevant literature and compiled a comprehensive bibliography of scientific sources, news accounts and articles about releasing a cetacean in *An Annotated Bibliography of Cetacean Releases* (<http://www.orcanetwork.org/Bibliography.pdf>). He talked to everyone he could find who had been involved in capturing or handling captive whales or dolphins in the US and Canada. From that record and his first-hand experience scientifically observing orcas in the Salish Sea, he gained confidence in Keiko's ability to recover to good health if moved to a natural environment, and he had a pretty good idea of how to rehabilitate and ultimately release Keiko back to Iceland.

Soon, however, support for returning Keiko to his ocean home evaporated. *Free Willy* producers were quoted in August saying "The research suggests that Keiko wouldn't know how to fend for himself in the wild. He doesn't have a pod. He'd be a lone whale out there. Putting him back in the ocean wouldn't be helping him. It would be killing him." and they "... would love to see Keiko at a Sea World park "where he'd be treated beautifully, given a good life and maybe even a girlfriend."

In the summer of 1993 a flurry of other proposals to rescue Keiko were also being discussed. Earth Island Institute, also asked to help find a solution for Keiko, wanted to rehabilitate him in a bay or inlet in Maine. That idea was effectively blocked by the National Marine Fisheries Service (NMFS), which would have required permits for a rehab site in U.S. waters. Their concern was that Keiko's skin problems might be transmitted to other whales or wildlife in the Atlantic. Information from Iceland showed the papilloma warts under Keiko's pectoral fins and on his tail stock had been seen among the orcas of the North Atlantic and are not contagious. The outbreak of warts on Keiko provided a scare story that effectively ruled out any location in the US for Keiko's rehabilitation seapen.

Drawing from the evidence, Balcomb was more sure every day that Keiko could survive and do well back in his native waters, but such a bold proposal would need some institutional backing. The 2-million-member Humane Society of the U.S. provided an endorsement while dolphin

activist Ben White found the needed negotiating team. White contacted Oscar Porter, general manager of Reino Aventura, to describe Balcomb's plan for Keiko, offering to bring Ken down to Mexico to discuss it. Porter agreed. Encouraged, White contacted every other organization he could find to add support to the delegation, including Mexican environment officials. Ken invited Life Magazine to come along, which sent writer Jo Beth McDaniel, and a photographer.

The day before the meeting in Mexico City Ken contacted SeaWorld to inform them that he intended to propose returning Keiko to Iceland. Ideally Ken hoped for cooperation from SeaWorld, but at least he wanted to make clear that his plan was based on a sound scientific foundation, not an animal rights agenda.

Permission granted!

By noon August 31, consensus had been reached by the five co-owners of the park and everyone around the table at Reino that Ken would be in charge of a plan to move Keiko to an enclosed natural seawater pen for rehabilitation. The plan would begin with studies off Iceland to identify Keiko's maternal family and ultimately return Keiko to them in his native waters after gradual release under close supervision. Reino's owners, managers, veterinarians and trainers shared Balcomb's faith in Keiko's ability to rebound to good health in a seawater enclosure and eventually resume his natural life. The owners agreed to provide a written agreement within two weeks, and to give Ken six months to finalize his plan for Keiko's release during which they would not negotiate with anyone else. The meeting was recorded on video with introductions by those present at the table and can be viewed **here**: <https://youtu.be/UOUwmRvLNTg>.

Balcomb shares a moment with Keiko at Reino Aventura in 1993.

Based on his field studies of the Southern Resident Orca Population since 1976, and his literature search and personal contacts with marine mammal trainers and veterinarians and with the capture teams who had removed orcas from the Salish Sea, Balcomb believed that Keiko would respond well to an ocean environment, and he strongly believed the orca should have the chance to go home to his family.



The empire strikes back

Within hours of the meeting Balcomb and the other coalition members were told that phones were ringing at Reino Aventura. They knew that meant trouble. The first official communication

was a faxed letter dated September 2, 1993, to Porter from Robert Jenkins, director of the Baltimore Aquarium and president of the Alliance of Marine Mammal Parks and Aquariums, led by Sea World. The letter mentioned “the commitment already made by members of the public display community to ensure the health and well-being of Keiko” and to “optimize living conditions for Keiko in Mexico City.” No such commitment had been mentioned in Mexico City, but by the timing of this communication, the Alliance evidently saw that as a result of the previous day's agreement between Ken and Reino Aventura, Keiko might eventually be moved to the North Atlantic to rejoin his family and swim happily ever after, and that prospect would shatter the industry’s claim that captive whales and dolphins can never be successfully returned to ocean habitats.

Ken had seen the stern bias from the industry to ignore or deny any scientific data that didn't agree with their public relations messaging. From the beginning of field research on orcas in 1973 in Canada there was great controversy about the photo-ID methodology. As Ken tells it, the debate was:

"whether the killer whale population being ‘harvested’ for sale to marine parks and aquaria throughout the world was identifiable and finite, essentially local, or anonymous and infinite as in merely passers-by from a world ocean of these large and charismatic marine predators.

"Mike Bigg was at the crux of this controversy because he had the audacity to say to the world’s most respected cetologists (whale and dolphin scientists) that he could identify each and every individual killer whale in the Pacific Northwest by the shape of its dorsal fin and the pigment pattern and scars on the ‘saddle patch’ on the back of each whale. Forty years later, this individual whale recognition is now common knowledge, but in 1976 the validity of the individual identification technique was being argued in US Federal Court and in meetings of the International Whaling Commission."

Balcomb was among the old guard in the Society for Marine Mammalogy (SMM). He had attended every conference on whale biology since 1977, and was a veteran field researcher with a sound reputation for scientific integrity and fascinating results that helped shape our understanding of the species. But until 1993, Balcomb had never proposed that a captive whale or dolphin might go home to its ocean habitat.

On his way to the 1993 SMM biennial conference in Galveston, Texas, November 12-16, hosted by the Galveston Aquarium, Balcomb flew to Miami to see and photograph Lolita, and to talk to the management of the Seaquarium about a proposed acoustic experiment. Since 1987, when that year's conference was hosted by the Seaquarium, Balcomb had proposed a simple experiment. He wanted to place a hydrophone in Lolita's pool, and either play tapes of her family's calls to her, or better yet hook up a live satellite feed from Puget Sound, so she could hear them and respond to them, live. Their two-way conversation could be recorded and analyzed. It would be easy to do, and it would demonstrate volumes about the whales'

communicative abilities and family ties. Balcomb spoke with the Seaquarium manager, a 21-year veteran of Sea World, who told Balcomb his experiment would never be allowed, his plan for Keiko would never work, and that there were four floors of SeaWorld lawyers in St. Louis sharpening their missiles to take aim at him if he tried.

A volunteer gets hooked

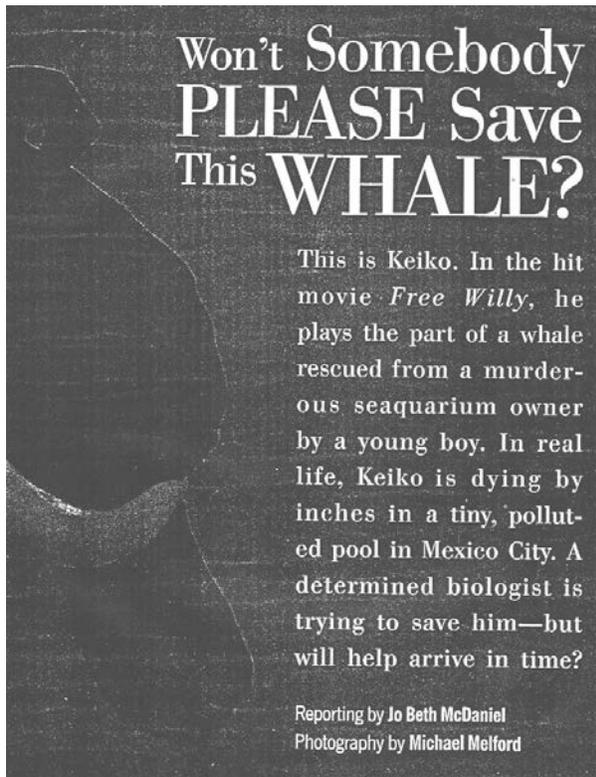
In the early 1980s I began assisting Ken with field studies on Southern Resident orcas. When he invited me to volunteer there I gladly took the offer from my brother to study whales. Day after day we met up with J, K, and L pods to photograph their dorsal fins and saddle patches, and record their activities. At around the same time the results of the first half dozen years of field research were published, showing discoveries unprecedented in wildlife biology, including complex social systems, pod-specific vocalizations, lifetime bonding of offspring with their mothers' pods and communities, and stark differences between fish-eating Residents and mammal-eating Transients. The whales we saw every day demonstrated cultural capabilities that were better understood using concepts borrowed from social sciences. Coincidentally, I had just completed my degree in Sociology, and orca behavior was looking eerily similar to my coursework. I was thoroughly captivated by these mysterious whales.

Keiko was the subject of almost daily global media coverage, virtually all of it sympathetic to our goals and our version of events. Ken was in the Atlantic Ocean doing photo-ID studies on humpbacks, so I handled most of the phone calls about his plan to rehabilitate and potentially release Keiko in Iceland. I felt we had pretty good public protection from any legal shenanigans by Sea World or the Alliance.

Scientists observe politics

Prior to the plenary session of the conference in Galveston, Ken attempted to establish a panel to advise on release projects. He thought it would be an interesting and much needed project to investigate reintroductions from a scientific perspective. Biologically, it was not a radical idea to rehabilitate cetaceans for potential release to the wild. The US Navy had just been tasked by Congress to figure out how to release their surplus bottlenose dolphins. Ken hoped that this community of authorities on the biology of whales and dolphins would impartially advise protocols and technology to carry out and monitor reintroduction programs. He was wrong. They wouldn't touch the issue. Since its founding, the membership of the SMM had always been informally intertwined with the marine park industry and the U.S. Navy Marine Mammal Program, for whom releasing their trained animals was a taboo topic. These relationships supported a wide array of scientific investigations and publications, but it could impact one's career to go on record saying a captive cetacean should be released or that it could be done safely. Politics prevailed.

The next day, *Free Willy* the video went out to stores and became the top-selling video that Christmas. It seemed every kid in America found a copy under the tree. It began to look like an entire generation would grow up knowing that performing whales have families, that they miss their families, and that they can return safely and happily to their families. Of course the average *Free Willy* fan was under ten years old, but they became a potent voice for Keiko's freedom.



Media attention to Keiko's plight and Ken's reintroduction plan grew ever more intense, spilling into world news and network TV. The November, 1993 *Life Magazine* ran a feature article describing Ken's plan to return Keiko to Iceland, titled: "Won't Somebody Please Save This Whale?" Meanwhile, SeaWorld and the Alliance, along with Warner Bros, the studio that produced *Free Willy*, ignored Ken's agreement with Reino and proclaimed they would think of something to save Keiko. Reino Aventura agreed with them, despite their documented agreement with Ken, and the fact that only Ken had actually put forth a draft plan to return Keiko to his ocean home. The plan had some novel solutions and relied on supporting evidence not generally known, but it wasn't even being discussed except to disparage it.

At a conference of veterinarians in June, 1994, Ken was avoided by SeaWorld personnel, but he talked to Dr. Jesse White, the veterinarian for the Seaquarium who had chosen Lolita from among the freshly-caught orcas on the Seattle waterfront in 1970. Dr. White had given her the name Tokitae, which was changed to Lolita soon after she arrived in Miami, although employees at the Seaquarium still call her Toki. Dr. White encouraged Ken that he was confident Keiko would recuperate and do well in his native habitat.

Ken had been asked to help Keiko and he took the commitment seriously, but nobody seemed to want to help. The topic of Keiko's future had become a political hot potato. SeaWorld was preparing to sue him for defamation so he accepted help from a San Francisco attorney to prepare a countersuit if needed. It was clear the knives were out for him from all quarters of the marine park industry, and no scientist wanted to get in the middle of that debacle. It was all part of a concerted effort by marine park management to block Keiko's release, and by June of 1994 they had clearly purged Ken and his rescue plan from anything involving Keiko.

Keiko revives in Oregon, thrives Iceland

Ultimately Craig McCaw, a wealthy benefactor who had backed Ken's proposal for Keiko to the tune of \$2.5 Million, became the primary funder of the Free Willy/Keiko Foundation (FWKF) that included Earth Island Institute, the Humane Society of the US, and Warner Bros., to oversee Keiko's transport to a \$12-Million natural seawater tank in Newport, Oregon. FWKF employed dozens of trainers and veterinarians who had previously worked at various marine parks, but not only was Ken not asked to consult on the project, no field researcher played any role in Keiko's rehabilitation or release (except to design and attach tracking tags) until March, 2002 when McCaw phased out his financial support, leaving Keiko's future to be managed by HSUS and Ocean Futures Society. Four months later Keiko began his trek across the Atlantic to Norway.

The realization was coming more clear by the day that the marine park industry would fight tooth and nail to prevent Keiko's release, and that the marine mammal science community would remain silent or align with the industry rather than help Keiko. An example can be found in a 2007 paper published in *Marine Mammal Science*, the journal of the Society of Marine Mammalogy, titled *From captivity to the wild and back: An attempt to release Keiko the killer whale*, by M. Simon, et al., documenting Keiko's behavior from July 7 to September 29, 2002. The paper concludes: "...Keiko's release to the wild was not successful, since though physically unrestricted and free to leave, he kept returning to his caretakers for food and company." And, "The release of Keiko demonstrated that release of long-term captive animals is especially challenging and while we as humans might find it appealing to free a long-term captive animal, the survival and well-being of the animal may be severely impacted in doing so." In other words, releasing a captive orca is just a naive fantasy.

And yet Keiko actually did quite well in the North Atlantic. The only evidence that Keiko's release to the wild was not successful was the fact that he didn't bond long-term with wild orcas, and was left to seek human companionship. Orcas are highly social but are known to only build long-term relationships with their immediate families and not with random orcas. The preliminary field work Ken had repeatedly recommended, using photo-ID, genetics, and acoustic studies to find and identify Keiko's family was never done, so Keiko was never returned to his immediate family members. In the absence of orca companionship he sought friendly humans. The summary judgment in the paper also ignored that Keiko rebounded to excellent health in Iceland, and was diving normally, using his native dialect, and catching his fill of fish, all hallmarks of success.

National media piled on with doubts about the wisdom of trying to release any captive orca. An article in *New Scientist* from April, 2008, was bluntly titled: "Why freeing Willy was the wrong thing to do." In 2001 the *New York Times* headlined: "Keiko Makes It Clear: His 'Free Willy' Was Just a Role," stating: "The sad fact is, it looks as if the world's mostly closely watched experiment in returning a cetacean to the wild is a bust." Then in September 2013 the *New*

York Times published an article titled: "The Whale Who Would Not Be Freed." The assumption was that Keiko, with a brain five times the size of any humans', had become habituated to human care and forgotten all he learned before his capture. ABC News reported that: "It was an outright rejection of six years of rehabilitation, as if Keiko had never left the amusement park. The \$20 million project had failed. Keiko was a tourist attraction again, and, it seemed, would always be a movie whale, not a wild one." The mistaken belief that Keiko's return to his native habitat failed has permeated public opinion as well as federal agencies. In an email to an advocate for Tokitae's retirement in her habitat, Barbara Kohn, Senior Staff Veterinarian for the USDA, wrote: "Please be advised that a previous effort to release a long-term captive orca to the wild ended with the animal's demise."

Our experience trying to return Keiko to the waters of his birth showed us not only that the marine park industry would fight back forcefully, using the full capacity of their well-oiled public relations juggernaut against any efforts or even discussions about returning any captive orca to its native habitat, but also that the industry saw the animals much differently than those of us who knew the whales from field studies. For those within the industry, the goal is to train and control the animals, to manipulate them with food deprivation to perform routines for the show. The whales and dolphins are trained using operant conditioning, in which an association is made between a behavior and a consequence. Eventually a mutually respectful relationship may develop between animal and trainer, but the manipulative protocols and routines are maintained regardless. In the minds of the trainers and everyone else involved with or influenced by the industry, whales and dolphins are trainable subjects, and any past histories, or our growing understandings of the capabilities and natural histories of the species, are irrelevant and not talked about. This is the perspective disseminated to the public by the powerful whale and dolphin captivity industry.

A very different animal is perceived by those of us who have observed free-ranging orcas for years and are up to date on emerging scientific findings that show, for example, complex social systems and intricate vocalization patterns distinct to matriline, pods, clans, and communities. We see them as highly evolved, powerful masters of their realm, self-aware, self-directed, and fearless apex predators acting according to their cultural traditions with utter confidence and self-determination. The 2001 landmark study titled *Culture in Whales and Dolphins* opened new windows for interpreting orca behavior. Coauthor Hal Whitehead says: "Culture is about learning from others. A cultural species starts behaving differently than a species where everything is determined genetically."

These two divergent perspectives had very real consequences for Keiko. Both in Mexico City in August, 1993 and in January, 1994, when Ken met with Craig McCaw in his office in Kirkland WA to talk about how to return Keiko to Iceland, Ken emphasized the necessity of conducting field studies off Iceland, including photo-ID, genetics, and acoustics, to identify Keiko's close relatives, especially his mother or siblings, to be able to find them when Keiko returned to Iceland. Ken was adamant that knowing where to find his family was essential to bringing him to them, rather than releasing him randomly off Iceland. With Ken removed from the team,

however, and no other field researcher involved, the staff hired by the Free Willy/Keiko Foundation were all brought in from the marine park industry. Their bias was to disregard the field studies showing lifetime family bonds in orcas for both male and female offspring. The decision was made to place Keiko's seapen on the island of Heimaey, south of Iceland. There are around 400 orcas photographed in the Icelandic ID catalogue, distributed all around the island nation, with the total population size unknown. When Keiko was led out of his seapen beginning in May, 2000, he sometimes interacted with orcas around Heimaey, but unrelated orcas would be highly unlikely to adopt an orca unfamiliar to them, and his own mother and matriline was probably hundreds of miles away. We can't be certain he would have rejoined them, but finding his matriline would have given him the best chance of permanently rejoining the population. This intense matrilineal family bonding, an essential element of orca natural history, was apparently unknown to the marine park employees who managed the Keiko project.

And yet the overall effort was successful. Keiko's health improved greatly in Oregon, and when he touched down in Iceland in September, 1998 his activity levels rose to a new peak. His newfound energy and independence from trainer control flourished. He lived five years in the North Atlantic.

In late summer of 2001 McCaw began to reduce his contribution to the Keiko project, resulting in staff reductions and reduced ability to monitor Keiko. In March 2002 McCaw phased out his support altogether. New staff and managers imposed new rules that removed all unnecessary interaction: No eye contact unless Keiko is being asked to do something. No rubdowns or affectionate massages, and just dead fish piped into the water at mealtimes instead of hand-feedings. Keiko's care went from zealous supervision to distant avoidance.

In the summer of 2002, after spending a month with wild orcas and no human contact, Keiko swam 1,000 miles from Iceland to Skaalvik Fjord, Norway, arriving well fed but a bit tired. Dr. Cornell, Keiko's veterinarian since 1996, examined him and found that: "After 60 days at sea and traveling more than one thousand miles, Keiko is strong and does not appear to have lost any weight whatsoever. There can no longer be any doubt that Keiko has foraged successfully." Keiko was already catching and eating half his diet in live fish in Oregon in 1998 (Eugene Register-Guard, July 4, 1998). Springer and Luna, the orca calves found separated from their families in 2002, showed that even 1-year-olds are competent to find, catch and eat their fill. Both Keiko and Tokitae learned how to catch fish long before either of them was captured, skills that are likely not forgotten.

The documented facts about Keiko's return to Iceland show that he regained good health, was fully competent to swim long distances, was able to catch his fill of fish, never lost his ability to communicate using North Atlantic dialects, became more independent of human caretakers, and more robust and vigorous beginning immediately after his return home. The fact that he didn't rejoin wild whales and bond with them was the result of the project managers' disregard for the knowledge that orcas bond only with their matrilineal families. They didn't try to locate

Keiko's family or bring him to them, and yet the industry has created the false impression that Keiko was not capable of returning to life in the ocean without human care.

Keiko was soon led from Skaalvik Fjord several hundred miles north to a remote cove in Taknes Bay, Norway where he was fed and monitored. The timing of the move happened to coincide with a shift in herring concentrations from nearshore to mid-ocean, resulting in few, if any, wild orcas within hundreds of miles of Taknes Bay. He was given human companionship when possible, but though he was free to come and go he never found his family, and in December 2003 Keiko died there after showing symptoms of pneumonia.

We learned much from Keiko's improved health and independence after reaching his home waters, and we learned volumes about the marine park industry's vast influence over public perceptions and even marine mammal scientists, and its ability to convince almost everyone that any attempt to rehabilitate and ultimately retire or release a captive whale or dolphin in its native habitat was ill-advised and likely to end in failure. The experience forewarned us that the same negative influence campaigns would plague our efforts to return Tokitae to her native waters.

At the same time, despite all the naysaying, Keiko's successful recovery from the stresses of captivity when returned to natural seawater at Newport Aquarium and even more so when reunited with his natural habitat, and his rebound to vigorous good health and independence, gave us assurance of Tokitae's potential to recuperate and improve her health in her native waters, and made us more certain than ever that she needed to return to where she was born and raised, and that she was fully capable of doing so safely.

The Lolita Campaign is Launched

By June of 1994, after Ken was sure he would not be part of the Keiko project, he turned his attention to Lolita, knowing she was a far better candidate to return to her home and family than Keiko, in large part because her family was well studied and documented and could be easily located any time they entered the Salish Sea. Having researched all aspects of reintroducing a captive orca for Keiko, and knowing Lolita's family history from conducting demographic studies on them almost daily since 1976, Ken had no question she could be returned safely in a scientifically guided process, and would do well back in her home waters, if only to be retired in a seapen or with access to care stations to be cared for indefinitely. Ken also had an important ally in Ralph Munro, Washington Secretary of State, who helped enlist Governor Mike Lowry. On March 9, 1995, Ken and his powerful backers stood in the lobby of the Daybreak Star Indian Cultural Center in Seattle to announce to local and national media the launch of the campaign to bring Lolita home after 25 years of captivity in Miami.

After the big announcement of the start of the Lolita campaign, Ken went back to his fieldwork and wasn't available to answer media and other inquiries or accept help from the public, so that

became my job. I formed a non-profit organization called the Tokitae Foundation that summer to inform the public about why she deserved to return home, that her family would remember her and she would remember them, and how it could be done safely and successfully.

Drawing from our experience drafting a plan for Keiko's rehab and release, I began drafting a plan to transport Toki from Miami to a seapen in the Salish Sea for rehabilitation prior to her potential release. The project would require a team of professional trainers, handlers, veterinary and other specialists, and a full-time project manager, among others. We were aware that the complex and specialized logistics arrangements, the hiring of professionals and contracting for net installation, staff and lab housing, etc., and the ongoing fund-raising and expensing, would require administrative capacity that we were not in a position to provide. Our proposal was intended to describe what such a plan would look like, to show how she could be transported and cared for without significant stress to her and with predictable health benefits, and to provide a basis for conversations about how it could be done. I borrowed details of the orca Morgan's proposed reintroduction, and Keiko's release efforts, and looked at various possible locations for the seapen and support structures.

In 1997 I moved to Miami to generate support there for her release, and predictably met with stern rejection, but also found important allies and generated some media attention to her sad situation. In late 1999 I returned to Washington to continue the campaign with help from Susan Berta who had been campaigning for Lolita on Whidbey Island. Together we started a new organization we called Orca Network in 2001 to campaign for Lolita and to provide a platform for reporting daily whale sightings and educational outreach and advocacy to help Southern Residents. The history of Lolita's captivity and the many events, breakthroughs, legal challenges, endorsements and obstructions in the efforts to bring her home are all well chronicled in *A Puget Sound Orca in Captivity* by Sandra Pollard.

We felt strongly that Lolita remembered and missed her family and her natural environment and needed to be returned home. We knew from abundant evidence that she would comfortably handle the transport across the country and immersion in her native waters to be rehabilitated in a seapen in a protected cove until she had regained her strength and stamina and showed she was ready to swim freely once again, with the opportunity to return for human care or rejoin her family.



Glenwood Springs on Orcas Island, the site of the proposed seapen is defined by the islands in the foreground to the dock in the background. Photo by Chris Teren Photography.

We considered several options for the location of her seapen, ultimately coming to an agreement in 2014 to use Glenwood Springs, a bay belonging to the Youngren family on Orcas Island in the San Juan Islands. The cove in East Sound is pristine and quiet, in a remote

location that fulfills the requirements for a seaside sanctuary to rehabilitate a captive orca: consistent underwater currents so that the water is kept clean by natural flushing, safety and protection from natural and human-generated hazards; accommodations for caregivers and other professionals for health care and feeding; a food storage and processing/wet area; staff and scientist housing; and 24/7 security by land and sea. According to Michael Parks, chief of marine operations for Keiko's rehabilitation and Site Search Consultant for the Whale Sanctuary Project, the Orcas Island location selected for Lolita's rehabilitation and retirement seapen fulfills every criterion. The current plan, with appendices, is available at www.orcanetwork.org/lolita and on the Lummi website SacredSea.org.

Support for Tokitae's retirement has grown immensely over the years. It would be impossible to estimate how many people have been touched by her story, who yearn to see her return to her home and potentially her family. The expressions of support have flowed in via social and traditional media non-stop in photos, emotional pleas, poems, artwork of many kinds, beautiful songs, creative videos, and demonstrations worldwide. We've sent Free Lolita email updates to thousands of supporters with every new development, and supporters are kept up to date on the Orca Network Lolita/Tokitae Facebook page.

Those opposed to retiring Tokitae however, are led by the owners of the facility and the captivity industry. Arthur Hertz, the owner of the Seaquarium, fought our proposal vigorously, maligning our intentions and our plan whenever asked. In 2014 Hertz sold the park to Parques Reunidos, an international corporation based in Spain that owned dozens of marine-related theme parks in Europe and the United States. His son Andrew then became General Manager.

Lolita gets lawyers

In 2012 attorneys for People for the Ethical Treatment of Animals (PETA) asked me to join in their lawsuits to force the Seaquarium to release Tokitae. Their first action that year was not about Toki but claimed that SeaWorld had violated the 13th Amendment prohibiting slavery. It was a bold move to establish the inherent rights of captive whales to life, liberty, and the pursuit

of happiness. That suit was dismissed but it helped establish personhood for orcas in public perceptions.

The lawyers then went to work to free Lolita, filing the following cases:

2012 – Petition to National Marine Fisheries Service (NMFS) to include Lolita in Endangered Species Act (ESA) listing of the Southern Resident orca population.

2013 – Lolita vs. US Dept. of Agriculture (USDA) to void the annual license granted to the Seaquarium despite violations of three Animal Welfare Act regulations:

- 1) the unlawfully small tank size;
- 2) the lack of shade from the Miami sun;
- 3) the lack of any orca companion.

Dismissed and lost on appeal, June 2015.

May 11, 2015 – Lolita included as an endangered whale with Southern Residents under the ESA.

May 20, 2015 – case filed vs. Seaquarium for harm and harassment to Lolita under ESA regulations.

2015 – Occupational Health and Safety Agency (OSHA) cites Seaquarium; no more trainers in water, initiated by the Animal Legal Defense Fund (ALDF).

2016 – New suit vs. USDA for granting license to new owner despite violations of the Animal Welfare Act. Dismissed and appealed. **Case still pending with no ruling on the appeal to date.**

2016 – ESA case dismissed. PETA appeals to a higher court.

Jan 11, 2018 – Appeal of ESA case dismissed.

In the court document announcing the final dismissal of the case against the Seaquarium for violations of the ESA, the judge wrote: "Appeal from the United States District Court for the Southern District of Florida. (January 12, 2018). The injuries PETA cites are: (1) Physical and psychological injury caused by Lolita's inability to engage in normal swimming and diving behaviors in her tank; (2) Psychological injury attributable to the absence of a socially compatible companion; (3) Rakes inflicted when the Pacific White-Sided Dolphins [PWSD] scrape Lolita with their teeth while swimming past her; (4) Stress caused by the PWSD's aggressive behavior; (5) Stress caused by the PWSDs' inappropriate sexual behavior; (6) "Surfer's eye," a condition caused by exposure to UV radiation for which Lolita requires twice-daily eye drops; (7) Blisters and wrinkles potentially caused by sun exposure; (8) Treatment with antibiotics, antifungals, pain medication, hormones, and antacids not used on wild orca; (9) General unhealthiness illustrated by: a mild kidney impairment, a high number of bacteria, past

treatment for respiratory infections, and a potential recurring lung condition; (10) Abnormal behavior like listless floating, lying motionless near her tank's inflow valve, pattern swimming, etc.; (11) Significant wear in six teeth; (12) A tooth that has been drilled multiple times; and (13) Captivity conditions likely to reduce Lolita's lifespan."

"IV. CONCLUSION: Under the ESA, "harm" or "harass[ment]" is only actionable if it poses a threat of serious harm. None of the thirteen injuries PETA cites satisfies that standard. The judgment of the district court is **AFFIRMED.**"

A footnote in the Court dismissal document stated: "We asked counsel for a submission directing us to the portion of the record discussing Lolita's proposed relocation. PETA's response acknowledges that the relocation plan is not itself in the record and, instead, cites a hyperlink included in an interrogatory response." The link given to the court led to a concept of a sanctuary for captive whales, but not to the retirement plan showing the actual location and plan for a seapen on Orcas Island that was online on the Orca Network website. PETA never mentioned to the court that a complete plan was available for their consideration, although the court expressed their interest in seeing the plan. We're left to wonder if, had PETA shown confident support and had at least a few marine biologists spoken up for the plan, the ruling might have been more favorable.

Tokitae's Lummi relatives vow to bring her home

Early in the summer of 2017 I got a call from Nickolaus Lewis, a member of the Lummi Indian Business Council. He wanted to know the history of Tokitae's captivity and our involvement in helping her return home, and he offered help from the Lummi Nation to make it happen. On August 8, 2017, at Orca Network's annual Capture Commemoration event to mark the anniversary of Toki's capture in 1970, a delegation of Lummi Council Members and the late hereditary Chief Bill James, presented a Resolution:

Dear Mr. Garrett:

On August 1, 2017 the Lummi Nation passed the following motion: "The Lummi Nation honors our connection to the Killer Whale (*qw'e lh'ol me'chen*) as a culturally significant species and supports the work of the Lummi Nation's Sovereignty and Treaty Protection Office in its efforts to bring the Killer Whale Tokitae home to her family as soon as possible."

Our Nation has joined in this effort to bring her home for many reasons. There is, first, the traditional importance of *qw'e lh'ol me'chen* (*the killer whale*). Second, there is the violence and violation of our traditional law in the motive and manner of her being captured and taken from her family. Third, in bringing her back to her family we not only offer her strength and healing, but also help strengthen her clan (pod) that lives in these

waters. In the end it is simply the good and right thing to do. Leaving her to sing out her song, alone, far from her family and in horrific conditions, is by any measure, a crime against nature. She must come home. We must bring her home. And we must ensure she returns to a long and prosperous life.

We know that a comprehensive transport, rehab, and retirement plan for her has been designed primarily by Ken Balcomb and Howard Garrett with input from a variety of experts, including descriptions and images of the location of her rehab seapen in East Sound, Orcas Island. There is no significant risk to her at any stage of the proposal for her return to her native waters.

We will prevail. She will prosper and, with this symbol of unity and care for the creation, we will preserve, protect, and restore the great Salish Sea and all its relations.

Please note that Councilman Nickolaus Lewis is authorized to speak on behalf of the Lummi Nation at the Penn Cove event.

Respectfully yours,

[signed]

Timothy Ballew II

Chairman

Lummi Indian Business Council

We were thrilled to see this deep resolve by the Lummi Nation to work with us to bring Tokitae home. Our role had always been to bring about public awareness of her terrible situation and the need to return her to the waters of her birth, and to explain how it could be done safely and effectively. But if and when an agreement was reached with the Seaquarium our organization was too small for the job. We would need a much larger entity to actually carry out the task and remain responsible for her indefinitely if needed.

The Lummi Nation not only had that capacity, but more importantly the Lummis had ancient authenticity to demand her return on indigenous traditional and spiritual grounds, as a relative, kidnapped and sent away to be stripped of her own traditions and language. For thousands of years the Lummis have moved about in canoes throughout the waters now known as the San Juan Islands and the Gulf Islands off Vancouver Island. Paddling among orcas daily, they would have come to know them personally over the millennia in ways we can't imagine. They could relate to her as family, as no non-native could, and they felt deeply and knew how to express their sacred obligation to bring her home. "Our Lummi term for orca is qwe'lhol'mechen, which means our relations under the water," explains Squil-le-he-le (Raynell Morris).

The wall of objections holding Tokitae in Miami

In the following months, Kurt Russo, political strategist for the Lummi Nation, attempted to set up a panel of marine mammal scientists to discuss Tokitae's retirement plan. Kurt sent letters to dozens of scientists requesting their consideration of the plan. Seventeen of the scientists responded favorably to discuss Toki's potential release, an equal number expressed their hesitation or opposition to the plan. All of the concerns expressed by those opposed to her return can be answered with facts and evidence showing her energy and alertness.

NOAA has taken the position that it would also need to approve any retirement plan for Tokitae. "Any future plans to move or release Lolita would ... undergo rigorous scientific review," said the National Marine Fisheries Service in its ruling granting her endangered status under the ESA.

Seaquarium general manager Eric Eimstad said, "It would be reckless and cruel to risk [the whale's] life by moving her." Robert Rose, curator for Miami Seaquarium, said in an interview with CBC News that the whale is too old to be moved. He's also worried Lolita would be exposed to pathogens and diseases that would kill the animal if moved.

The effect of these arguments is to prevent efforts to return her to her home, as these opinions have great influence in the media and public opinion, and in legal and permitting systems. Open discussions of these points would help clarify that orcas start learning and practicing skills like catching fish at a very young age. A four-year old orca is far more developed than a human that age. Saying she was just a baby at the time of her capture is naive anthropomorphism.

The Totem Journey

In May 2018 Lummi House of Tears carvers Jewel James and Doug James along with Lummi Council members and many supporters embarked on a 7,000-mile journey to Miami and back with a 16½-foot totem pole carved in the likeness of an orca accompanied by salmon and seals, to show their dedication to bringing Sk'aliCh'elh-tenaut home. As Doug James tells: "They have feelings, they cry, they remember. They feel the pain, the loss of their loved ones." Three days of ceremonies and testimonials in Miami were profoundly moving and motivating, culminating in a march to the Seaquarium to call out to Tokitae from outside the tank she's occupied since 1970. The Totem then became the focus of an exhibit at the Florida Museum of Natural History in Gainesville. In June, the 2019 Totem Journey back to Lummi stopped for ceremonies along the banks of Penn Cove, where Sk'aliCh'elh-tenaut was tragically stolen from her family.

Anti-captivity awareness spreads worldwide

Those Free Willy fans who learned in the 1990s about orca families, and the suffering inherent in captivity in marine parks, and about devious park owners, have now grown up and many are learning more about orcas, especially captive orcas, and are educating others about the need to end captivity for whales and dolphins. In January 2013, the documentary *Blackfish*, about Tilikum, a captive orca who killed three people, premiered at the Sundance Film Festival. By December 2014 the stock price of SeaWorld declined by 60 percent after 22 screenings of *Blackfish* on CNN that swept the ratings among every group under 55 years old. The film was released on Netflix in December 2013 amid constant negative media coverage and waves of anti-captivity activism in the US and Europe.

Anti-captivity awareness and activism has even reached into Russia. In November, 2019, after months of sustained investigations and public activism by Russian environmentalists, the Russian government released 87 belugas and 10 orcas that had been captured and held for over a year in cramped pens to be sold to theme parks. Russia will likely also change the law that currently allows their capture for “educational and cultural purposes,” a loophole used to legally capture belugas and orcas for aquariums in Russia and abroad, especially in China. The Russian ban on further captures may be dampening the marine park industry in China, where over 80 parks are currently open and two dozen more are under construction. China depends on captures in Russia to supply the animals, so it remains to be seen how it will adapt to the capture ban. Thus it appears that the entire world now understands that confining whales and dolphins in tanks to perform for our entertainment is morally unacceptable and should end immediately.

However, the more difficult challenge to address before Tokitae can return to her native waters is that the world needs to see that even after five decades in captivity she is still capable of returning home safely.

Tokitae’s story is now being told and discussed widely in all manner of media. The bare facts of her story evoke high emotions and commitment to getting her out of there. The Lolita campaign has joined with dozens of similar efforts worldwide, uncounted expressions of support that continue daily, weekly demonstrations at the entrance to the Seaquarium, marches and protests, and now the Lummi resolution to bring her home, fortified by the powerful Totem Journey. All of these earnest supporters yearn for the day she is returned to her rightful place in the world, where she was born and raised, where her family still travels. We owe our gratitude and candid honesty to the legions of caring people who want so badly to see her back in her home. Many have become frustrated with the slow pace of progress toward that goal, and the many dashed hopes and setbacks. This retrospective is written with a sense of obligation toward the overwhelming multitudes of advocates for her return home, and in hopes of somehow changing current beliefs that the move would be too risky, to one day see Tokitae swim freely, whether in a monitored seapen or ranging widely in her native Salish Sea. It is in that spirit that this story is told, in hopes of moving together toward that vision.

What happens next?

In July 2019 Lummi elders Squil-le-hel-le (Raynell Morris) and Tah-Mas (Ellie Kinley) sent a letter to the Seaquarium stating their intention to sue the park to force them to return Sk'aliCh'elh-tenaut under the Native American Graves Protection and Repatriation Act. Soon thereafter Andrew Hertz, son of the former owner Arthur Hertz, quietly resigned as General Manager.

Also in July 2019, the EQT corporation, an investment management company based in Sweden, purchased 51% of Parques Reunidos, owner of the Seaquarium, and took the company off the stock market, ending most public disclosure of business indicators. A decision as momentous as offering Sk'aliCh'elh-tenaut to be retired in the Salish Sea would now be in the hands of the two families that own EQT.

As noted, in the summer of 2017 the Lummi Indian Business Council declared their unwavering sacred obligation to bring Tokitae home.

The Lummis remain deeply committed to returning Sk'ali Chehl-tenaut. In June, 2020, Lummis announced a new partnership with Earth Law Center, a nonprofit environmental organization working to transform the law to recognize, honor and protect nature's inherent rights to exist, thrive and evolve. ELC partners with frontline indigenous people and communities to challenge the overarching legal and economic systems that reward environmental harm, and advance governance systems that maximize social and ecological well-being. ELC plans legal action toward Tokitae's return home soon.

The concerns and empathy for Tokitae change her circumstances by impacting public opinion and revenues at the gate and thus the economic incentive to keep her there. But she can't come home until she is seen as capable of returning safely by biologists and veterinarians.

Many marine mammal scientists have expressed their doubts that Tokitae is capable of returning to her native home. The concerns center on Tokitae herself, that due to her age or time in captivity she is incapable of managing the stress of transport to a monitored seapen, to be provisioned and cared for by professional staff. Her memories of her life before capture are seldom considered. These assumptions should be examined in light of the abundance of evidence, including the available literature and precedents, and especially her documented high energy and alertness.

Orcas are the undisputed top ocean predator and have been for 8-10 million years since their origins, so they have no flight/fight/fright response, or any fear whatsoever. Their brains are five times the size of human brains and more complex. But fundamentally, their lifelong membership in their families, which take a multitude of forms throughout the world's oceans, and their deep loyalty to their ancient traditional cultures that shape their diets, their communications, associations, in fact all their activities 24/7, show self-awareness of their social identity to a degree we can only imagine. Lifetime membership in their exclusive

extended families removes any question or anxiety about who they are or how to act. They learn it all from birth, and it never changes.



*Ska'li Chehl-tenaut breaches several times during each of two shows daily.
Photo by Mandy Wegner.*

All of this speaks volumes about Sk'aliChehl-tenaut, an orca raised and taught lovingly by her mother and extended family, then brutally ripped from them and put in a box for our entertainment. There is no indication that she has lost her cardiovascular health or stamina, or her consciousness of her surroundings, or her extraordinary capacity for empathy, now extended to the humans she interacts with, or her memories and self-awareness as a member of her family and community and their range of movement or habitat. Former Seaquarium trainer Marcia

Henton reports: "I've been able to go back into her journals 20 years, and look up old signals, and those signals are what trainers use to communicate with the animals. And I know for a fact I haven't used a certain signal for the time I've been here—eight years. So I can walk up here and give her a signal she hasn't seen in at least 8 years, and she remembers it" (KOMO-TV, 1996). A study reported in the Proceedings of the Royal Society titled: *Decades-long social memory in bottlenose dolphins*, demonstrates that dolphins remember the calls of other dolphins after having spent time in captive facilities with them over 20 years earlier. Orcas are large dolphins with much larger brains. There can be no doubt that Sk'aliChehl-tenaut remembers her time with her family and clan, and the waters she was born and raised in, regardless of the years that have passed.

Her memories are invisible to her captors and handlers, but though she may be harmed she is not broken mentally or physically. She knows who she really is. Any arguments against her expedited return to her home and family must consider her indelible memories and loyalties to her family.

This retrospective of Toki's strange and tragic life and the 25-year Lolita campaign is meant to invite those discussions, especially with those who have concerns that she might not be capable of returning home. Let's give her the benefit of level-headed, well-informed conversations, to assess and hopefully reach a new consensus about her abilities. She is an extraordinary orca, so courageous, and yet so gentle. She shows unfathomable intelligence to survive these five decades, over 30 years longer than any other captive Southern Resident orca. She doesn't gnaw on bars or bash her head on the wall, or show signs of depression or mental distress. Her teeth are in remarkably good condition. She seems responsive to audio and visual signals and often becomes physically active of her own volition. She may splash Seaquarium employees if given the opportunity, showing her creative self-control, but she has never harmed anyone. She deserves our full consideration of her potential to return to her natural home, with the opportunity to see, hear, and be with her family, again. That seems the least we can do for her after her 50 years of confinement in a tiny tank for our entertainment.

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