



Critical Caselaw

Personhood Through the Lens of
Animal Standing

Cetacean Community v. Bush
Naruto v. Slater

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“As an endangered species under the Endangered Species Act . . . the bird (*Loxioides bailleui*), a member of the Hawaiian honeycreeper family, also has legal status and wings its way into federal court as a plaintiff in its own right.”

Palila v. Hawaii Dep't Land & Natural Res., 852 F.2d 1106 (9th Cir. 1988).



A Quick Primer on Standing

Article III Standing

Cases controversies

- Injury
 - Concrete & particularized
 - Actual or imminent
- Causation
 - Fairly traceable to defendant's action
- Redressability
 - Likely (not speculative) that injury will be redressed by a favorable decision

Statutory Standing

Congressional intent

- Express (private right)
- "Zone of interest" (prudential)



Cetacean Community v. Bush

Literal Definitions



“But we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons.”

Cetacean Community v. Bush



The Statutes

Private right of action (express)

- Endangered Species Act (ESA)
- Administrative Procedures Act § 10(a): “A *person* suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”

Zone of interest

- Marine Mammal Protection Act (MMPA)
- National Environmental Protection Act (NEPA)



Endangered Species Act

“[A]ny *person* may commence a civil suit on his own behalf . . . to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof.” 16 U.S.C. § 1540(g).

“The term “person” means an individual, corporation, partnership, trust, association, or an other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, or any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.” 16 U.S.C. § 1532(13).

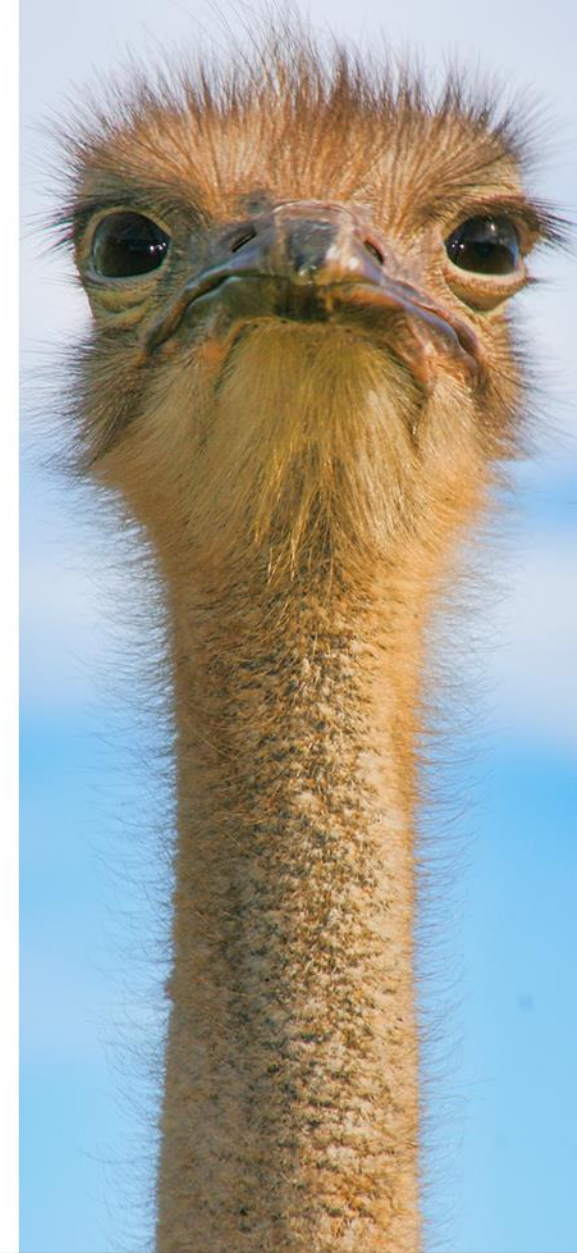
“The scheme of the ESA is that a “person,” as defined in § 1532(13), may sue in federal district court to enforce the duties the statute prescribes. Those duties protect animals who are “endangered” or “threatened” under § 1532(6) and (20). The statute is set up to authorize “persons” to sue to protect animals whenever those animals are “endangered” or “threatened.” Animals are not authorized to sue in their own names to protect themselves. **There is no hint in the definition of “person” in § 1532(13) that the “person” authorized to bring suit to protect an endangered or threatened species can be an animal that is itself endangered or threatened.**” *Cetacean Community v. Bush*



Administrative Procedures Act

“[P]erson” includes an individual, partnership, corporation, association, or public or private organization other than an agency.” 5 U.S.C. § 551(2).”

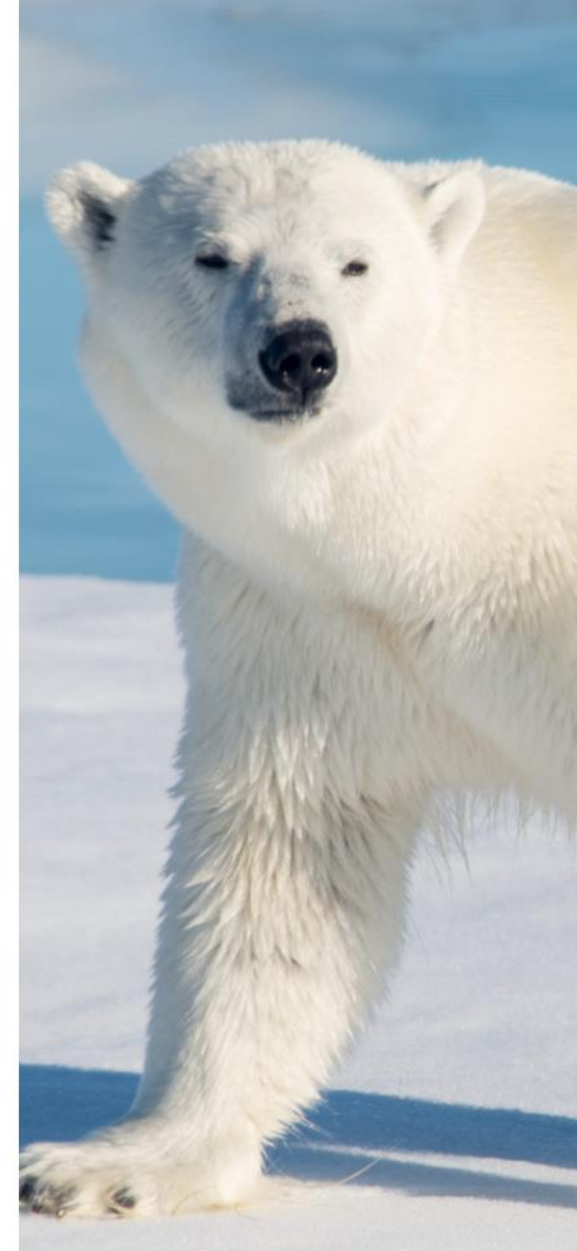
“Notably absent from that definition is ‘animal.’ . . . Section 10(a) means that we should read the underlying statute to grant standing generously, such that “persons” who are “adversely affected or aggrieved” are all persons “arguably within the zone of interests” protected by the underlying statute. . . . But, as with the ESA, these cases do not instruct us to expand the basic definition of “person” beyond the definition provided in the APA.”
Cetacean Community v. Bush



Marine Mammal Protection Act

“Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit.” 16 U.S.C. § 1374(d)(6).

“Relying on Section 10(a) of the APA, as well as *Data Processing and Clarke*, we have held that affected “persons” with conservationist, aesthetic, recreational, or economic interests in the protection of marine mammals have standing to seek to compel someone to apply for a permit under the MMPA. . . . But, as discussed above, Section 10(a) of the APA does not define “person” to include animals. **No court has ever held that an animal—even a marine mammal whose protection is at stake—has standing to sue in its own name to require that a party seek a permit or letter of authorization under the MMPA.**” *Cetacean Community v. Bush*



National Environmental Protection Act

As is true of the MMPA, no provision of NEPA explicitly grants any person or entity standing to enforce the statute, but judicial enforcement of NEPA rights is available through the APA. . . . Interpreting NEPA broadly, we have recognized standing for *individuals and groups of individuals who sue to require preparation of an EIS, when they contend that a challenged federal action will adversely affect the environment. . . . However, we see nothing in either NEPA or the APA that would permit us to hold that animals who are part of the environment have standing to bring suit on their own behalf. Cetacean Community v. Bush*



The Result

“If Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly.” . . . In the absence of any such statement in the ESA, the MMPA, or NEPA, or the APA, we conclude that the Cetaceans do not have statutory standing to sue.”



Naruto v. Slater

Indicia of Personhood





The “monkey selfie case”

Next Friend Standing

Elements of Next Friend Standing

- Plaintiff can't litigate own case
- Next friend has significant relationship with plaintiff and is truly dedicated to the plaintiff's interests.

“Based on the dangers inherent in any third-party standing doctrine, the Court declined to expand “next friend” standing beyond what was authorized by Congress in the habeas corpus statute. . . . Although Congress has authorized “next friend” lawsuits on behalf of habeas petitioners, . . . and on behalf of a “minor or incompetent person,” . . . there is no such authorization for “next friend” lawsuits brought on behalf of animals. . . . [I]f animals are to be accorded rights to sue, the provisions involved therefore should state such rights expressly.” *Naruto v. Slater*

“[T]here is a significant difference between people who cannot press their own cases and animals who can ‘never credibly articulate [their] interests or goals.’”
Naruto v. Slater



Statutory Standing

- Copyright Act does not expressly grant animals standing

“The court in *Cetacean* did not rely on the fact that the statutes at issue in that case referred to “persons” or “individuals.” . . . Instead, the court crafted a simple rule of statutory interpretation: if an Act of Congress plainly states that animals have statutory standing, then animals have statutory standing. If the statute does not so plainly state, then animals do not have statutory standing.” *Naruto v. Slater*

- Indicia of personhood

“The terms “children,” “grandchildren,” “legitimate,” “widow,” and “widower” all imply humanity and necessarily exclude animals that do not marry and do not have heirs entitled to property by law.” *Naruto v. Slater*



Footnote 7

“While we believe *Cetacean* was incorrectly decided [on the issue of Article III standing], it is binding circuit precedent that non-human animals enjoy constitutional standing to pursue claims in federal court. . . . Although we must faithfully apply precedent, we are not restrained from pointing out, when we conclude after reasoned consideration, that a prior decision of the court needs reexamination. This is such a case. Animals have neither constitutional nor statutory standing. Article III standing “often turns on the nature and source of the claim asserted.” . . . Other than *Cetacean*, no case has held that animals have constitutional standing to pursue claims in federal court. . . . Prior to *Cetacean*, no court ever intimated that animals possess interests that can form the basis of a case or controversy. As to statutory standing, Congress has never provided that animals may sue in their own names in federal court, and there is no aspect of federal law (other than *Cetacean*) that has ever recognized that animals have the right to sue in their own name as a litigant. . . . ***Because animals do not possess cognizable interests***, it stands to reason that they cannot bring suit in federal court in their own names to protect such interests unless Congress determines otherwise.” *Naruto v. Slater*



The Language of the Concurrence

“Animal-next-friend standing is particularly susceptible to abuse. Allowing next-friend standing on behalf of animals allows lawyers (as in *Cetacean*) and various interest groups (as here) to bring suit on behalf of those animals or objects with no means or manner to ensure the animals’ interests are truly being expressed or advanced. Such a change would fundamentally alter the litigation landscape. Institutional actors could simply claim some form of relationship to the animal or object to obtain standing and use it to advance their own institutional goals with no means to curtail those actions. We have no idea whether animals or objects wish to own copyrights or open bank accounts to hold their royalties from sales of pictures. To some extent, as humans, we have a general understanding of the similar interests of other humans. In the habeas corpus context, we presume other humans desire liberty. Similarly, in actions on behalf of infants, for example, we presume the infant would want to retain ownership of the property she inherited. But the interests of animals? We are really asking what another species desires. Do animals want to own property, such as copyrights? Are animals willing to assume the duties associated with the rights PETA seems to be advancing on their behalf?⁶ Animal-next-friend standing is materially different from a competent person representing an incompetent person. We have millennia of experience understanding the interests and desire of humankind. This is not necessarily true for animals. Because the “real party in interest” can actually never credibly articulate its interests or goals, next-friend standing for animals is left at the mercy of the institutional actor to advance its own interests, which it imputes to the animal or object with no accountability. This literally creates an avenue for what Chief Justice Rehnquist feared: making the actual party in interest a “pawn to be manipulated on a chessboard larger than his own case.”

“As the Majority opinion highlights in its treatment of the merits, PETA brought a frivolous lawsuit here. The argument that animals have statutory standing to maintain a Copyright Act claim—or any property right claims—is an easy question.”



It's Not an Easy Question

“The question will have to be addressed eventually. Can a non-human animal be entitled to release from confinement through writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing? . . . The inadequacy of the law as a vehicle to address some of our most difficult ethical dilemmas is on display in this matter. . . . The Appellate Division’s conclusion that a chimpanzee cannot be considered a ‘person’ and is not entitled to habeas relief is in fact based on nothing more than the premise a chimpanzee is not a member of the human species. . . . **To solve this dilemma, we have to recognize its complexity and confront it.** In the interval since we first denied leave to the Non-Human Rights Project, I have struggled with whether this was the right decision. . . . The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it.”
In re Nonhuman Rights Project, Inc. on Behalf of Tommy (N.Y. 2018) (Fahey, J. concurring).





“rhetorical flourishes”



Questions?

Thank you!

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