

AQUATIC ANIMAL LAW

Overview



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ALDF Symposium

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LAND ACKNOWLEDGEMENT



- We are hosting from Portland, Oregon
- Important to acknowledge the ancestors of this place, to recognize that we are here because of the sacrifices forced upon them.
- At Lewis & Clark we honor the indigenous people on whose traditional and ancestral homelands we stand: the Multnomah, Kathlamet, Clackamas, Tumwater, Watlala bands of the Chinook, the Tualatin Kalapuya and many other indigenous nations of the Columbia River.
- In remembering these communities, we honor their legacy, their lives, and their descendants.
- Land acknowledgements can be fraught, but are important to note.

We can learn much about respectful relationships with animals and the planet from these historical and present-day communities, especially about our relationships with other animals.

AQUATIC ANIMALS AS PROPERTY



ANIMALS AS PROPERTY



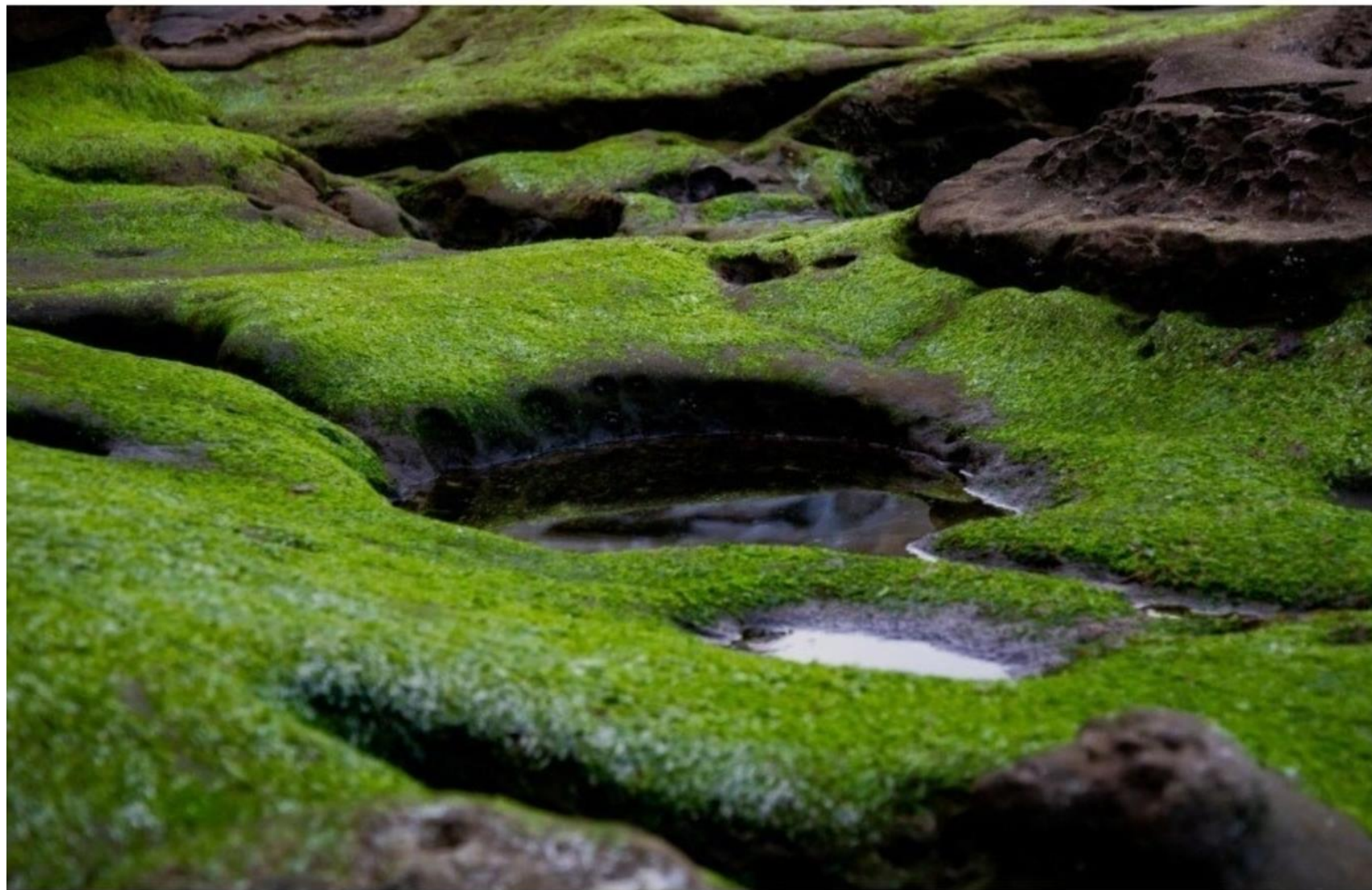
- Property status of animals is contested and evolving
- Animals are all deemed “owned” or “managed”
 - By individuals and corporations as private property, or
 - By governments - wild animals
- “Ownership” does not always require responsible care
 - Owners have the ability to regulate all facets of animals’ lives
 - Owners not always required to protect them from harm
 - Permissible to inflict harm – research, food production, etc.
- Animals are not seen as self-owning
 - Similar problems with children – guardians to assist
 - Other disfavored human populations
 - Nature
 - This category is also evolving
- Animals are seen as:
 - Plentiful and renewable (“sustainable”) resource
 - Designed to be used
 - Useful/valuable only for human benefit

SEEING & UNDERSTANDING AQUATIC ANIMALS



- *Invisibility is a problem*
 - We literally can't see most of these animals
 - Lack of interaction = lack of understanding, empathy
- *Uncountable numbers*
 - We treat as unlimited resource
 - We discount the value of individuals
- *Significant need for legal protection and regulation of use and abuse*
 - *Animals are not seen as valuable for themselves*
- *Alternatives possible, and growing, for most uses*
 - Food, research, entertainment, medicine, jewelry

AQUATIC ANIMALS



WHO ARE THE ANIMALS?

Not Just Fishes



reefbuilders

- Fin fishes
- Amphibians
- Echinoderms
- Mollusks
 - Cephalopods
- Crustaceans
- Reptiles
- Marine Mammals
 - Cetaceans
 - Pinnipeds
- Cnidaria – corals
- Porifera – sponges
- Aquatic birds
- Aquatic Insects & spiders

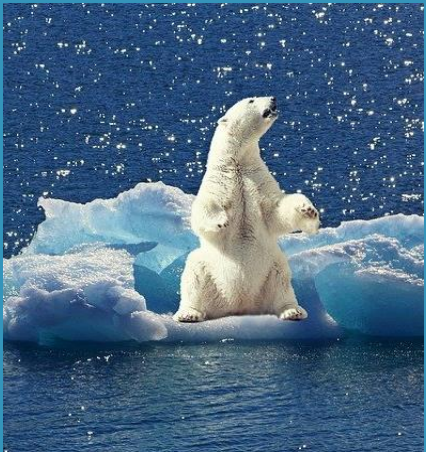
HOW DO WE DEFINE AND USE THEM?



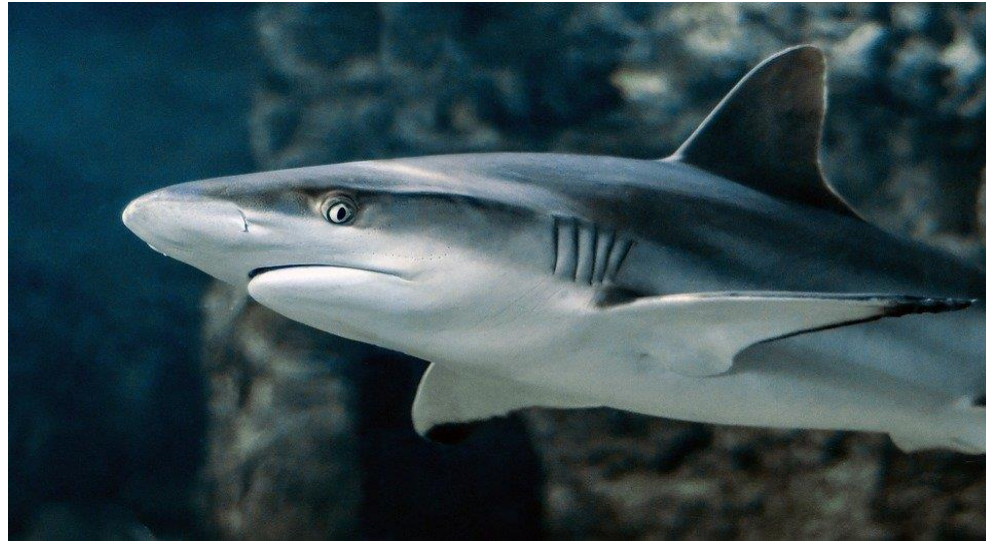
- Companion/pets
- Food and fiber
- Skins, Fur
- Entertainment
 - Aquariums, zoos
 - Fly-fishing/Sport Fishing
 - Otter Cafes
 - Shark cage-diving
 - Whale watching
 - Movies, Media
 - Others
- Work
- Research / Science
- Education
- Medicine
- Beauty & Culture
- Decorations
- “Pests”
- Wildlife
- ... and more!

Why is this important?

WHY DO AQUATIC ANIMALS MATTER?



- For themselves
- For species survival
- For the environment
- For us



LEGISLATION

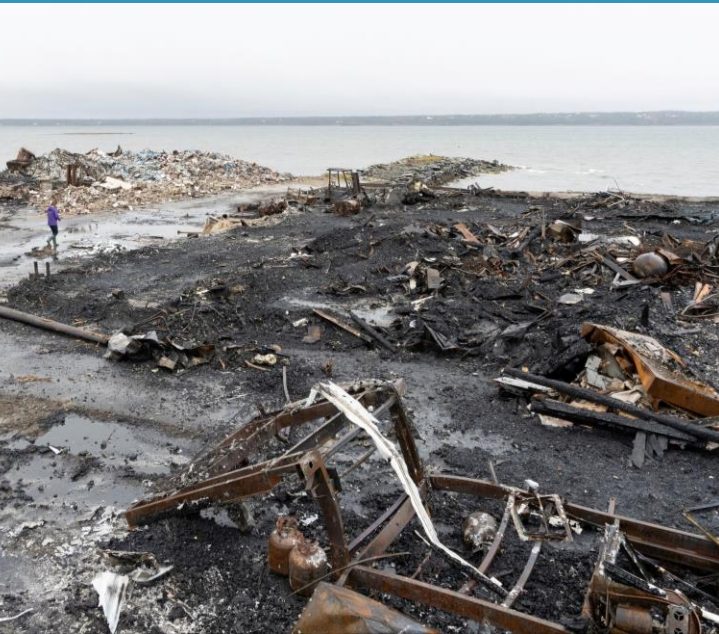


U.S. LAWS



- **Exclusions:**
 - AWA – excludes animals used for food or fiber, invertebrates
 - Humane Methods of Livestock Slaughter Act
 - Federal Meat Inspection Act
 - 28 Hour Transport Law
 - Breeding – no protections
 - ESA – not for farmed animals
 - Anti-cruelty –
 - Only some states include aquatic animals
 - Exemptions for farming, research, hunting, fishing
- Aquaculture not widely regulated yet
 - No federal permit system
 - Some state regulation
 - No third-party best aquaculture practices

TRIBAL PERSPECTIVES



- Should respect sovereignty, jurisdiction, traditions, but:
 - Treaties violated
 - Negative impacts on shared water
 - Challenge to access, control of resources in aquaculture and wild caught contexts
- Indigenous people have multiple perspectives
 - Fighting against net pens to protect fisheries and environment and salmon
 - Others pushing for more licenses and partnering with industry
- IUCN – Global Indigenous Network for Aquaculture
- Yurok & Yakima tribes working to protect water, salmon
 - Engaged in conversations about dam removal
- More countries beginning to include indigenous and tribal people in conversations about environmental protection and management

SENTIENCE



SCIENCE & LAW

“It’s Official:
Fish Feel Pain”

Smithsonian

January 8, 2018



SENTIENCE



- Increasing number of scientific studies - recognition of sentience and other capacities for aquatic animals
 - Some challenges using this framework
- Science having some impact on legal realm
 - U.K. now including *all decapod crustaceans and cephalopod molluscs* (in addition to all vertebrates)
 - Spain already recognized some animal sentience in criminal code – now added to civil code through legislation - companions
 - Alberta Court of Appeal case – animals are living, feeling beings (crim, companion)
- 21 countries (at least in part), and the EU, recognize some sentience
 - Austria, Belgium, Sweden, Chile, New Zealand, France, Finland, Switzerland, etc.
 - Some smaller jurisdictions – like Oregon, Quebec, Canberra
 - Don't always include invertebrates
- Studies beginning to focus on ocean aquaculture settings
 - Welfare of wild caught fish - though more for animals used for human food rather than aquaculture feed
- Studies on psychological preferences of cleaner wrasse – breeding to be more interested in eating salmon lice

ACCEPT SCIENCE



- Cambridge Declaration on Consciousness
 - Includes cephalopods
- Scientific consensus that fish feel pain
- Precautionary principle when considering uses of animals
- Requires a shift in our approach to aquatic species
 - Social and legal perspective
 - Affects our duties to avoid harm
- Have enough data that we should change our legal default to assume that these animals are sentient and deserving of protections, unless proven otherwise

SENTIENCE SHOULD RESULT IN LEGAL PROTECTIONS



- Duty not to cause unnecessary harm and suffering
 - What is unnecessary
 - What is harm and suffering
- Duty to use alternatives – no harmful use allowed when alternatives available
 - Duty to develop alternatives – non-animal options
- Shift defaults
 - Precautionary principle used
 - Assume sentience unless proven otherwise
 - Shift burden of proof to users who want to use them and cause them harm
- Standards forcing legislation (like car emissions) even if we currently don't have the ability, we need to get there for their sake and our own

REFRAMING LAWS AND THINKING



WAYS FORWARD



- Stop seeing animals and the natural world primarily as resources for human use.
- Recognize that fishing and aquaculture are not the only exploitative and extractive uses of the natural and built environments.
- Assess sustainability and harm within the context of other uses and degradations as well.
- Consider the needs of the animals themselves in any sustainability analysis
 - For individual animals
 - For species

THANK YOU!

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