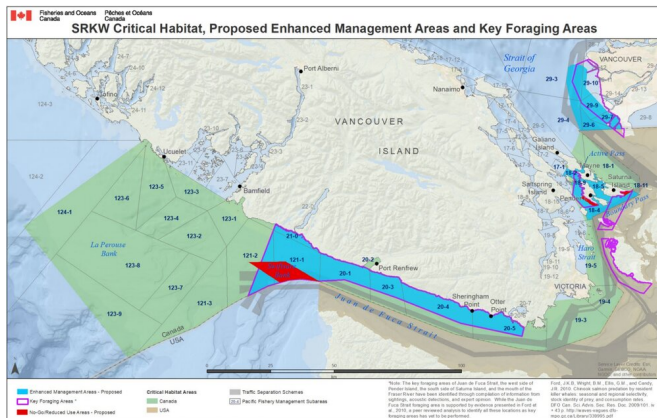


# Why the southern resident killer whales should have the same rights as people

26 April 2019, by Linda Nowlan



Critical habitat for the southern resident killer whale, key foraging areas, and proposed enhanced management areas. Credit: Fisheries and Oceans Canada

Each year, the number of southern resident killer whales in the Salish Sea on the Pacific coast declines—yet another species on the road to extinction. Last summer, many grieved as they watched an orca named J35, also known as Tahlequah, [carried her dead calf for more than two weeks](#).

The Canadian government has since introduced measures intended to save these struggling whales. One proposes to [establish small sanctuaries](#) within some areas of their critical habitat.

Another route is to give these killer whales legal rights. Scientists and environmental lawyers agree that whales need the legal rights of personhood to give them a voice in courts and legislatures, and to secure their continued survival and well being.

## Rights for nature on the rise

In 2014, Lori Marino, a biopsychologist at Emory

University in Atlanta, told *National Geographic*, "[There is abundant, unquestionable evidence for personhood for animals.](#)"

Marino is one of many scientists who find that whales' intelligence, consciousness and sense of self qualify them as people in the eyes of the law. Dalhousie University professor Hal Whitehead, who [wrote a book about the distinct culture of whales and dolphins](#), is another.

Legal scholars agree that nature deserves rights. "As a matter of law, [rights of nature can be done](#)," writes Oliver Houck, a professor of law at Tulane University in New Orleans. The exact nature of those rights will take time to define, through legislative acts and court decisions.

One way to extend rights to nature is to provide it with the rights of legal personhood. The key feature of legal personhood is the ability to hold rights and to enforce those rights through the courts.

People have the right to life, liberty and security of the person, as guaranteed by the [Universal Declaration of Human Rights](#). Whales do not.

Yet laws have increasingly extended legal personhood rights to non-human entities. Corporations are the most prominent example.

In the past few decades, governments around the world have passed statutes and adopted constitutions to extend rights to nature. David Boyd, one of Canada's leading environmental lawyers, made the role of the law clear in his 2017 book, [The Rights of Nature: A Legal Revolution That Could Save the World](#).

More recently, scientists [echoed this call when they wrote](#) a commentary in the journal *Science* titled, "A rights revolution for nature."

If a whale were given the legal rights of

personhood, it could sue for injury, a court would have to take any injury into account and any legal relief granted would have to be for the whale's benefit. Christopher Stone, an emeritus professor at the Gould School of Law at the University of Southern California, identified these three criteria for exercising legal personhood rights in his classic 1972 book [Should Trees Have Standing?](#)

### Canada's actions are failing

The southern resident killer whales are [threatened by depleted prey populations \(mainly Chinook salmon\), physical disturbances that interfere with echolocation, pollution and climate change](#), as well as the projected increased tanker traffic from the Trans Mountain pipeline expansion. The [federal government](#) will announce on June 18 whether it will re-approve the expansion project, despite findings of a "[significant adverse environmental effects](#)" on the whales.

Fisheries and Oceans Canada has been slow to reduce threats to the southern resident killer whales from commercial fishing and shipping, [despite the tools at its disposal](#).

Even though the federal environment and fisheries ministers said the southern resident killer whales faced "[imminent threats to their survival and recovery](#)," they did not issue an emergency order to mandate extra steps for protection. Instead, the government made other promises, [including a plan to look into creating sanctuaries in some of the whales' foraging spots](#).

The proposed new sanctuaries are small, voluntary and likely unenforceable, as the term carries no consequences in any of the Canadian laws that protect marine mammals, endangered species or marine marine areas. A new term without a clear definition only clouds the waters.

### Sanctuaries in the age of extinction

If society is to stop extinction, we must try new approaches.

In the 16th century, a sanctuary was a place of refuge or protection. The definition was later

broadened to include lands set aside for wild animals. In the 21st century, a sanctuary could be a place where a species exercises the legal rights of personhood.

This next-generation sanctuary would be a protected area covering all of the species' critical habitat. For the southern resident right whale, the sanctuary would cross national borders with the goal of reversing its population decline.

The law would enshrine the legal rights of personhood for these whales. It would appoint a guardian or governance board empowered to act on behalf of the whales and enforce their rights. It could, for example, ask for habitat maintenance and restoration, and could claim and receive compensation for past injuries.

### The rights revolution

This is not a radical idea. Legal personhood has been granted to corporations, trusts, churches, joint ventures and nation-states. It seems perverse to grant non-living corporations the same rights as people while denying those rights to sentient and intelligent beings such as whales.

New Zealand has granted personhood rights to land and water, including the [Whanganui River](#) and the former national park of Te Urewara. Governing bodies now act as the "human faces" and must act in accordance with the area's best interests and Ma?ri laws.

[Courts in several jurisdictions have recently extended](#) legal rights to animals —why not here?

[Boyd has already argued](#) that the rights of southern right killer whales must be recognized, and the U.S.-based [Earth Law Center](#) and [Rights of the Salish Sea Project](#) are campaigning for these rights.

Canada's proposed postage-stamp-sized sanctuaries won't offer real protection for the southern resident [killer whales](#). Yet the creation of a new sanctuary in the Salish Sea, where these [whales](#) could exercise [legal rights](#)—allowing them to forage, breed and find prey, and keep them free

from pollution—would be the bold step needed to save these orcas from extinction.

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