

Rights of Orcas Frequently Asked Questions

I. Why do we need to recognize Nature’s rights?

Human health and wellbeing are inseparable from a clean and healthy environment, which provides humankind access to clean water, air, shelter, medicine, and food. Over 8 million people live in the communities surrounding the Salish Sea. Their lives depend on the health and well-being of the Salish Sea and her ecosystems and species. As a result, Washington State recognizes the need for promoting cross-species health efforts.¹ Further, because the Salish Sea has played an integral role in tribal culture and sustenance since time immemorial, many Indigenous communities are her stewards.²

Our current dominant legal and economic systems perpetuate environmental degradation by assuming that 1) infinite economic growth is possible on a finite planet, and 2) the natural world is merely property or a “resource” for human use and benefit. Modern environmental laws subscribe to these assumptions and are therefore limited in their ability to prevent widespread environmental degradation caused by climate change, pollution, and land disturbance, to name a few. On the other hand, “Rights of Nature” is a framework emerging in law and policy worldwide to transform the assumptions and values underlying these systems around our relationship with and responsibilities to Nature.

Western legal systems use a “rights” based framework.³ In the U.S., the most notable examples are in the U.S. and State Constitutions, delineating such rights as to free speech, freedom of religion and equal protection of the laws. In this construct, the concept of rights reflects legal,

¹ “One Health Initiative for Washington State.” Washington State Department of Health.
<https://www.doh.wa.gov/CommunityandEnvironment/OneHealth>.

² Crothers, Lauren. “Indigenous Peoples Unite in Fight to Heal the Salish Sea.” Mongabay Environmental News, November 20, 2019. <https://news.mongabay.com/2019/02/indigenous-peoples-unite-in-fight-to-heal-the-salish-sea/>.

³ We recognize that many Indigenous Peoples do not express their relationships with other humans and the natural world in terms of “rights”. See Aimee Craft: Craft, A. (2016). Giving and receiving life from Anishinaabe *nibi inaakonigewin* (our water law) research. In *Methodological Challenges in Nature-Culture and Environmental History Research* (pp. 125-139). Routledge. While there is much discussion about the value of other frameworks (not based on “rights”), we recognize that implementing such frameworks requires a complete restructuring of our current legal system and the upending of the societal expectations of many people. For a general discussion on the history, meaning, and critique of rights see the Stanford Encyclopedia of Philosophy. Stanford University. July 9, 2007. Retrieved July 31, 2021, available at <https://plato.stanford.edu/entries/rights/>. “Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states. Rights dominate modern understandings of what actions are permissible and which institutions are just. Rights structure the form of governments, the content of laws, and the shape of morality as many now see it. To accept a set of rights is to approve a distribution of freedom and authority, and so to endorse a certain view of what may, must, and must not be done.”

social, and ethical norms. In other words, rights are the fundamental normative rules about what is owed to, or allowed of, a person or entity recognized as having rights. Recognizing a living being or entity as having rights is a statement of societal values as evidenced by the civil rights, LGBTQ rights, and suffrage movements.

“Legal rights” are thus based on a society’s laws, values, and customs. Rights described as “natural, inherent, inalienable, or fundamental” are rights that exist unconditionally: they are recognized, not granted, and, while they may be denied or previously unrecognized, they cannot be taken away. Once recognized in law, inherent and fundamental rights become legally recognized rights. Such is the case with recognizing the rights of Nature. Nature’s, and the Orcas’, rights exist, even though our legal system has yet to formally recognize them. From a practical perspective, when a living being or entity is recognized as having rights, it means that others have a corresponding responsibility to uphold and respect those rights. The rights-bearing being or entity can enforce and assert their rights in various forums, and seek protection of their rights in court, if needed.

Just as humans have inherent rights for being and existing, so, too, do all the species with which we coexist, and the ecosystems with which we are an inseparable part. This recognition, although made in a “rights-based” framework, may also be viewed as a way of acknowledging the worldview of the Coast Salish peoples. For example, the Lummi regard Orcas as “qw’e lh’ol’ me chen,” which means “our relations who live under the sea,” and the Southern Resident Orcas (“Orcas”) as a related clan named Sk’aliCh’elh. The name honors their inherent rights, and longstanding cultural and affinal ties with the Coast Salish.

Protecting the Orcas’ rights requires reducing threats to their existence as well as restoring and fostering the healthy ecosystem that they, and we, need to exist and thrive. When making policy and management decisions, the Orcas’ interests and needs must be considered alongside human populations.

II. What are the benefits of a State bill recognizing the rights of the Southern Resident Orcas?

A State Bill recognizing the rights of the Southern Resident Orcas would create a whole-system approach to governance, serving as a unifying foundation for overcoming our current anthropocentric and fragmented approach to conservation and governance within the region. The bill would provide an effective norm (code of conduct) for our legal, governance and economic systems to be reframed within, grounded in a foundational paradigm of relationships and interconnectedness, thus enhancing the understanding of the complex web of relationships within the Salish Sea ecosystem among humans and all other beings.

More specifically, the purpose of the bill is threefold: (1) recognize the Southern Resident Orcas’ rights, and identify those rights; (2) create mechanisms for implementation; and (3) create enforcement mechanisms and establish remedies.

By recognizing and protecting the Southern Resident Orca's rights – such as the right to be free of captivity and adequate food supply from naturally occurring prey – we can begin to restore the species, and therefore the entire Salish Sea ecosystem, to health.

III. What are the benefits and challenges of recognizing Rights of Nature?

a. Benefits

- Increases protection and restoration of the natural environment;
- Provides standing for Nature to defend her rights in court via legal guardians, members of a local community, or others acting in her best interests;
- Aligns with other rights-based movements, such as rights of future generations and human environmental rights;
- Helps to keep human activity within the Earth's natural capacity;
- Aims to maintain or increase environmental health, rather than merely slow the decline; and
- Shifts societal perspectives towards living in harmony with Nature.

b. Challenges

- The concept may be unfamiliar to many people, particularly those accustomed to operating within a legal system that treats humans as separate from Nature, despite the reality that we are Nature, and Nature's rights advances human rights;
- Introduces a new legal framework that may be challenged by certain corporations and industry groups as unlawful; and
- Supports the movement for Earth-centered laws that is growing rapidly, but will still take time to reach the 25% "tipping point" for social change.⁴

IV. Why is it important to recognize the rights of Southern Resident Orcas?

Southern Resident Orcas are native to the Salish Sea and are locally culturally, spiritually, and economically important. Unfortunately, the Southern Resident population is declining and categorized by state and federal law "at risk or vulnerable to extinction." As of the last official count, only 75 individuals remain.

Western law and colonization has led to the subjugation and exclusion of Indigenous Peoples and knowledge. Indigenous worldviews have generally been based on holistic relationships between human and non-human beings, creating a harmonious give-and-take between humankind and the Earth. For example, the Lhaq'temish people of the Lummi Nation have held a kinship relationship with Orcas since time immemorial and consider Orcas as "qwe'lhol'mechen," or "their relations under the waves." A State bill would help to correct this wrong and honor relationships and worldviews of Indigenous Peoples of the Salish Sea.

⁴ *How to Make Social Change*, YES! Magazine, available at <https://www.yesmagazine.org/issue/what-the-rest-of-the-world-knows/2020/11/03/how-social-change-happens> (visited Aug. 18, 2021).

Our legal system and current laws have proven ineffective and inefficient in protecting the Orcas and their habitat. The plight of the SROs highlight the anthropocentric nature of our legal systems and why a transformation and systemic change is needed.

For example, despite the protection they gained at the federal level under the Endangered Species Act in 2005, the Southern Resident population has continued to decline. The Endangered Species Act has many loopholes and maintains a paradigm in which it is acceptable to decimate a species (essentially as disposable property), as long as the illusion that extinction is being avoided is maintained. And despite its mandate, the Endangered Species Act Committee (aka, the "God Squad") has the authority to exempt an agency action from the requirements of section 7(a)(2). As a result, activities can still proceed even if it threatens the existence of species. For example, the Endangered Species Act creates a process for approving the "take" (which often means killing) of a listed species as a means to allow certain activity but purportedly limit the harm to the species.

State laws and processes, even where intended to protect the Southern Residents, have similar limitations. For example, Governor Inslee's Executive Order 18-02 established the Southern Resident Killer Whale Recovery and Task Force to identify, prioritize and support the implementation of a long-term action plan for the recovery of Southern Resident orcas to ensure a healthy and sustained population for the future. Yet, as many public commenters noted, the Orcas themselves did not have a seat at the table and a clear voice in the process. Had the Orcas been represented by guardians acting on their behalf and in their best interests, the conversations would have been different, and it is highly likely that the Task Force would have recommended more truly bold actions.

V. What are the potential economic benefits of supporting the rights of Southern Resident Orcas?

Implementing the legal rights of Orcas would require us to begin making decisions about human development in a truly holistic, systemic and precautionary way. Decisions based on holistic and sustainability principles benefit the economy. Consider the following:

- The cumulative economic impact of poor ocean management practices costs \$200 billion (USD) per year.⁵
- In British Columbia, the lower mainland's aquatic near-shore services such as flood protection, water supply, and critical habitat for fish and other animals are estimated to provide between \$30 and \$60 billion in benefits each year. In Washington, human benefits such as climate regulation, pollination, water supply and treatment, nutrient

⁵ United Nations Development Programme. Rep. *UNDP Annual Report*. New York, NY: Bureau of External Relations and Advocacy, 2012.

cycling, and recreation provide approximately \$10 to \$80 billion worth of benefits each year.⁶

- A significant oil spill could cost WA state an average of \$10.8 billion (based on 2006 estimates) and adversely affect 165,000 jobs.⁷
- The Salish Sea region supports 88,000 tourism related jobs and generates \$3 billion in spending. The value of the overall whale watching industry in Washington State is worth at least \$65-\$70 million annually, with an average annual growth rate of 3%. In San Juan County alone “whale watching participants who whale watch from boat-based tours or from terrestrial viewing points in San Juan County support over \$216 million worth of economic activity in the Puget Sound Region every year. This activity generates more than \$12 million in state and local tax revenue annually and supports over 1,800 jobs.”⁸
- Renewable energy sources have replaced the output of the Lower Snake dams several times over and the dams do not provide peaking power due to low flows and fish passage limitations.⁹
- Measures to address the lack of prey (salmon) for the Southern Resident orcas, will similarly support broader ecosystem health, resulting in more abundance for everyone, including the fisheries, which generate \$1.6 billion in revenue annually in Washington state alone¹⁰. This is of great concern given the mounting and projected impacts of climate change. For example, one billion marine animals are estimated to have died during the heatwave across the Pacific north-west and Canada in July, 2021¹¹.

V. What does this mean for my property rights?

Most of those rights we consider under the umbrella of property rights will not be significantly impacted by a law that recognizes the Orcas’ rights. What will be impacted is how property rights are exercised because they will be balanced with the rights of the Orcas and the responsibilities owed to Nature. This means that property owners may have additional stewardship responsibilities to help realize the rights of the Orcas and the Salish Sea as a whole.

⁶“What Is an Ecosystem Worth? OUR THREATENED COAST: NATURE AND SHARED BENEFITS IN THE SALISH SEA.” Raincoast.org. Accessed 2021. <https://www.raincoast.org/wp-content/uploads/2016/10/Ch-3-What-is-an-Ecosystem-Worth.pdf>.

⁷Keltner, Ty. “Oil Spill Prevention in Washington.” Oil spill prevention - Washington State Department of Ecology. Accessed August 9, 2021. <https://ecology.wa.gov/Spills-Cleanup/Spills/Oil-spill-prevention>.

⁸Cox, Justin. “The Economic Impact of Killer Whales in the Salish Sea.” SeaDoc Society. SeaDoc Society, March 4, 2019. <https://www.seadocsociety.org/blog/the-economic-impact-of-killer-whales-in-the-salish-sea>.

⁹“Bonneville Power,” DamSense. Accessed 2021. <https://damsense.org/bonneville-power/>.

¹⁰Chowder, Dukes Seafood and. “Disappearance of Wild SALMON Hurts Local Economy | Provided by DUKE’S Seafood & CHOWDER.” The Seattle Times. The Seattle Times Company, February 7, 2018. <https://www.seattletimes.com/sponsored/disappearance-of-wild-salmon-hurts-local-economy/>.

¹¹Cecco, Leyland. “‘Heat Dome’ Probably KILLED 1bn Marine Animals on Canada Coast, Experts Say.” The Guardian. Guardian News and Media, July 8, 2021. <https://www.theguardian.com/environment/2021/jul/08/heat-dome-canada-pacific-northwest-animal-deaths>.

The resulting improvements to the ecosystem's health will directly benefit the human members of the ecosystem as well.

VI. Can you give an example of how human activities and behavior may change to realize the Southern Residents' rights?

For recreational and commercial fishers, regulations may decrease fishing quotas to ensure enough salmon are available for the Southern Residents. That is because current fishery allocations do not consider the Orcas' needs. The Southern Resident Orca population needs approximately 662 Chinook a day to thrive. Supporting their right to live would require setting aside this amount of fish first, and then deciding if allocations may then be made to other stakeholders in a way that allows the salmon populations to replenish and thrive.

Such recognition is not intended to infringe upon Tribal sovereignty or treaty rights. The recognition of the Orcas' rights can be made in a way that reinforces Indigenous rights. For example, in August 2020, the Tsilhqot'in Nation of British Columbia closed all salmon fishing within their territory west of Williams Lake (including the Fraser River run) due to "extreme conservation concern." They are also calling on Canada's Minister of Fisheries and Oceans to issue an emergency order to close all sockeye fisheries on the Fraser River, noting the need to protect runs for future generations. To follow their lead, we must apply the precautionary principle and consider short-term closures when necessary to ensure the survival of salmon populations and the Southern Resident Orcas. By implementing a rights-based approach to restore and ensure the long-term survival of salmon populations, we recognize and respect Indigenous people's rights to life, health, traditions, and culture.

VII. How Can Your Community Join the Movement to Recognize Nature's Rights?

Your community can recognize Nature's rights by passing supportive laws and policies. In the U.S., over two dozen municipalities have passed local laws recognizing the Rights of Nature. We are calling on local communities and Tribal Nations to pass local resolutions in support of a State bill.

The goal of passing a resolution in your local community that recognizes the Rights of Nature in some form, in this case pertaining specifically to the Southern Resident Orcas and the ecosystems upon which they depend, is to educate and build awareness about your unique relationship with, and dependency upon, the broader ecosystem around you. Resolutions passed in [Crestone](#) and Nederland, Colorado offer examples of this approach. The more local communities that have passed a resolution in support of a State bill, the more likely it is that our State legislators will introduce and pass the bill.

In addition to passing a resolution in support of a State level bill, sovereign Tribal Nations may also pass laws recognizing the rights of the Southern Resident Orcas. For instance, the Nez

Perce Tribe and Yurok Tribe recognized the rights of the Snake River and Klamath River, respectively. The Ponca Nation recently announced it will recognize rights of the Arkansas and the Salt Fork Rivers, expanding its previous Rights of Nature recognition. The Ho-Chunk Nation recognized Nature’s rights in a resolution and is advancing a constitutional amendment, while the White Earth band of Ojibwe recognized the rights of Manoomin. As sovereign Nations, Tribes are better able to defend against challenges often faced by municipalities based on the limited scope of municipal authority and preemption.

For in depth analysis and understanding of the local Rights of Nature movement in the United States we recommend reading: *The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways* by Marsha Moutrie, available for free [here](#). See also Chapter 9 on the United States in the coursebook, *Earth Law: Emerging Ecocentric Law—A Guide for Practitioners*, co-authored by Elizabeth M. Dunne, Esq. and Lindsey Schromen-Wawrin, available for purchase [here](#).

IX. Will recognizing the rights of the Southern Resident Orca’s rights lead to an influx in lawsuits?

Recognizing the rights of the Orcas may mean some increase in lawsuits, at least in the near term. The goal, however, is a law that will result in changes in policies and practices at the rapid pace necessary to prevent the Orcas’ extinction. The quicker these changes occur, the more likely the Orcas are to survive and ultimately thrive, with a corresponding reduction in the need to bring lawsuits to enforce the Orcas’ rights.

Moreover, lawsuits brought under the law must still satisfy legal prerequisites, so a claim for redress will only survive in court if the State or other actors have infringed upon the rights of the Southern Resident Orcas.

X. Where else has a “Rights of Nature” framework been implemented, particularly with regard to marine waters and marine mammals?

a. United States

- The [Marine Life Proclamation](#) passed in Malibu in 2014 resolved that whales and dolphins have the right to free and safe passage and “encourages citizens of the world to do all within their power to protect them and preserve the oceans in which they were destined to spend their lives.”
- Also in 2014, San Francisco passed the “[Free and Safe Passage of Whales and Dolphins in San Francisco’s Coastal Waters](#)” Resolution supporting the free and safe passage of cetaceans in their waters and to be free from captivity.
- Over two dozen municipalities in the United States have passed local ordinances or resolutions recognizing the rights of nature, including Santa Monica, in 2014 passed the [Sustainability Rights Ordinance](#) that includes the

right of the community to self-governance and that the marine waters possessed the “fundamental and inalienable rights to exist and flourish.”

- The ʔEsdilagh First Nation (one of the six that comprises the Tsilhqot’in Nation) enacted the Sturgeon River Law (also known as the Fraser River) that states the people, animals, fish, plants, the nen (“lands”), and the tu (“waters”) have rights.¹²

b. International

- [Laws](#) prohibiting cetaceans in captivity are growing internationally.
- In 2010, a conference held on Cetacean Rights in Helsinki produced a [Declaration](#) on the Rights of Cetaceans for universal adoption.
- [Ecuador](#), [Bolivia](#) and [Mexico City](#) now protect Rights of Nature in their constitutions or national law.
- Court cases in [Ecuador](#) highlight how rights of Nature improves enforcement and supports conservation efforts, especially in regards to the Galapagos.
- [Galapagos Marine Reserve](#) includes the rights of Nature as a guiding principle for management. Commercial fishing is prohibited, and fishing is limited to sustainable artisanal fishing. In Ecuador, regulations have been passed as a result of the constitutional amendment, including the National Plan for the Conservation of Marine Turtles, the Protection of hammerhead sharks from bycatch and prohibitions on certain types of fishing gear (For more on the Special Law of the [Galapagos](#).)
- Recent New Zealand treaty agreements declared a [river](#), [national park](#), and [sacred mountain](#) as legal entities with “all the rights of a legal person.”
- Colombia declared both the [Atrato River](#) and [Colombia Amazon](#) as a “legal entity subject to basic rights” through court decisions.
- The [Belize Barrier Reef](#) was recognized as a subject of rights. Adoption of an indefinite moratorium signed into law on December 29, 2017, to preserve the World Heritage site reef builds on earlier recognition of Nature as subject of rights.
- A [case in the Philippines](#) successfully revoked a permit for oil exploration in the Tanon Strait (a marine protected area) and found that “there should be no questions of their [the petitioners] right to represent the resident marine mammals since the primary steward, the government, had failed in its duty to protect the environment pursuant to the public trust doctrine.”
- The [Hauraki Gulf Marine Park Spatial Plan](#), or “Sea Change Plan” (the Plan)/ New Zealand: Though the Plan does not codify legal rights for the Park, there is an implicit recognition of Rights of Nature stating “Gulf communities need

¹² Tsilhqot’in Nation. “ʔEsdilagh Sturgeon River Law.” Esdilagh.com, May 28, 2020.
<http://www.esdilagh.com/PDF/Esdilagh%20Elhdaqox%20Law%20Final%20Version.pdf>.

to adjust their relationships with the lands and waters around them. Rather than thinking of the environment and its bounty as an entitlement, considering it as a being in its own right will help us to rethink our reciprocal responsibilities and work toward a better balance.”¹³ Customary environmental law, Kaitiakitanga, guides management of the Park and it is defined as “an ethic and practice of protection and conservation of the natural environment and the resources [....]”¹⁴ The main objective of Kaitiakitanga is to maintain a “natural and appropriate balance” between the need of the people, the Mother Earth, and the Sea. The Plan goes further and extends the establishment of the role of guardianship to the community in general, calling upon guardianship to be “practiced by all.”¹⁵

- Over 20 countries have some form of rights of nature law or judicial decision: <http://www.harmonywithnatureun.org/rightsOfNature/>
- Initiatives are growing internationally recognizing the rights of marine waters and species: www.earthlawcenter.org/oceanrights

XIV. [Sample] Resolution Recognizing the Fundamental Rights of the Southern Resident Orcas

RESOLUTION RECOGNIZING THE FUNDAMENTAL RIGHTS OF THE SOUTHERN RESIDENT ORCAS

WHEREAS, the Southern Resident orcas (“the Orcas”) are critically endangered with only **75** remaining. The Orcas’ birthrate has plummeted precipitously. According to data from the Center for Whale Research, in the last 22 years, 43 Orcas have been born and survived, but 78 have died or gone missing.

WHEREAS, the Orcas’ survival is dependent on healthy and functioning ecosystems including the Salish Sea, the Fraser River Watershed, the Columbia River Basin, and the lower Snake River Watershed.

WHEREAS, our legal system has proven inadequate in addressing the threats to these ecosystems and to the Orcas.

WHEREAS, the rights of marine mammals to exist and flourish have been recognized internationally and locally, including through the Helsinki Declaration (2010), the Marine Life Proclamation of the City of Malibu, California (2014), and the City of San Francisco’s resolution guaranteeing the Free and Safe Passage of Whales and Dolphins in San Francisco’s Coastal Waters (2014).

¹³ Seachange Stakeholder Working Group. Rep. *Sea Change: Hauraki Gulf Marine Spatial Plan*, April 2017. <https://www.seachange.org.nz/assets/Sea-Change/5086-SCTTTP-Marine-Spatial-Plan-WR.pdf>, pg. 31.

¹⁴ Ibid. pg. 26.

¹⁵ Ibid. pg. 161.

WHEREAS, in May 2018, the Affiliated Tribes of Northwest Indians of the United States, passed a resolution (Resolution #18-32) recognizing the Orcas (also known as Blackfish) as revered relations for which there is a sacred obligation to ensure they are treated “in a dignified manner that reflects tribal cultural values that have been passed down for countless generations.”

WHEREAS, over 5,000 people and 15 organizations have signed a *Declaration of the Rights of the Southern Resident Orcas*, recognizing that Nature and all living beings have inherent rights to exist, flourish, evolve, regenerate, recover, and be restored, including the Orcas and the ecosystems upon which they depend.

WHEREAS, over 20 countries, dozens of local communities in the United States, and several tribal governments have recognized that Nature has inherent rights, such as to exist, thrive, evolve, and be restored, and that we, as humans, who are intimately interconnected with Nature, have the responsibility to steward Nature in a manner consistent with the realization of her rights and the rights of future generations.

WHEREAS, we support joining other communities worldwide in adopting a new framework for environmental protection based upon the recognition that Nature has inherent rights and should be heard as a real party in interest in legal actions affecting her rights.

NOW THEREFORE, BE IT RESOLVED, that

Section 1. Nature and all living beings, including the Orcas and the ecosystems upon which they depend, are recognized as possessing inherent rights, including to exist, flourish, evolve, regenerate, recover, and be restored.

Section 2. The rights of the Orcas include, but are not limited to, the right to:

- (a) Life
- (b) Autonomy
- (c) Culture
- (d) Free and safe passage
- (e) Adequate food supply from naturally occurring sources
- (f) Freedom from conditions causing physical, emotional, or mental harm, including a habitat degraded by noise, pollution and contamination

Section 3. The Council supports actions by local, state, federal, and tribal governments that secure and effectuate the rights of the Orcas and of the ecosystems upon which they depend.

ADOPTED this ____ day of _____, 2021.

XV. Where can we learn more?

Please visit the following websites for additional information:

<https://www.earthlawcenter.org/salish-sea-initiative>

<http://legalrightsforthesalishsea.org/>

<https://www.earthlawcenter.org/blog-entries/2018/8/rights-for-the-southern-resident-orca>