

1AC – Save the Whales

Eleven years ago Marine Policy expert Dr. VonZharen warned: “Everybody takes the sea for granted. The problem is when you look at it you only see a wibbly wobbly bit of water, and people don't realise there is a third dimension -- such as all the critters that live in the sea -- we don't even know what some of them are. So we don't know much about this thing but we are already treating it as if it is an unchangeable fact of life that will always be there -- but if we keep removing or destroying the biodiversity, it is going to have consequences that we cannot even think about.”¹

Because any damage to the biodiversity of the sea is a critical imbalance, my partner and I shall champion the case to save the whales and thereby affirm that **the U.S. Federal Government should significantly reform its environmental policy.**

We will be affirming the resolution using a straightforward methodology called goals criteria. We'll look at the goal of the Status Quo, which the negative incidentally is defending, demonstrate how current policy fails to meet its own goal, and then provide a policy that meets the goal. By doing so we will have affirmed that the U.S. ought reform its environmental policy.

Observation One, Resolutinal Analysis:

Here we specify how to weigh your decision today on whether to change our environmental policy or not.

Point 1, the **Goal: Protect whale population**

According to Congressional Resolution 287, agreed in June of 1990:

“Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that--(1) United States policy should promote the maximum conservation and protection of the world's whale populations; (2) toward that goal, the United States should work to continue the International Whaling Commission moratorium on the commercial killing of whales and maintain zero catch limits for all whale stocks for at least another decade, that is, to the year 2000 or beyond;”

(1990, “Calling for a United States policy of promoting the continuation, for a minimum of an additional 10 years, of the International Whaling Commission's moratorium on the commercial killing,” H.Con.Res.287, <http://thomas.loc.gov/cgi-bin/query/z?c101:S.CON.RES.126.RS:>)

What was the method? Point 2, **the method: zero whale deaths**

As we will see, this goal was not achieved by 2000 or at all, as whale takes are continuing.

¹ *Dr. W.M. von Zharen [LL.M in International and Environmental Law/Admiralty Law; J.D.; Marine Policy Coordinator for the Texas Institute of Oceanography, Ed. D. in Anthropology and International Studies/Curriculum; Texas A&M; Graduate appointments in the Department of Oceanography and the Department of Geography; faculty member in the Departments of Maritime Administration and Marine Sciences; Former Attorney with Exxon Shipping; M.A.] “OCEAN ECOSYSTEM STEWARDSHIP” William and Mary Environmental Law and Policy Review, Fall, 1998 (23 Wm. & Mary Envtl. L. & Pol'y Rev. 1)*

Point 3 is the **definition of policy:**

Princeton's Wordnet defines policy as “a plan of action adopted by an individual or social group.” Thus, we will prove a better plan of action to meet the goal of protecting the whale population. Let's get to the failures of the Status Quo in meeting its own goal in...

Observation Two: Failures of the Status Quo

Sometimes the foxes watch the chicken coop. We find this the case in failure...

A. Hypocritical Enforcement

You'll need to know a couple words here. The NMFS is the National Maritime Fisheries Service, and a “take” is a bad thing – it means a whale in trouble, usually dead. Enough mumbo...

1. No Expectation of Success

Richard Max Strahan [Founder and chief science officer of Whale Safe USA] “20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Essay: A New Paradigm For Conservation Of Great Whales In The Urban Sea Of The United States--Species In Need Of A “Green Knight”” Boston College Environmental Affairs Law Review, 2009 (36 B.C. Envtl. Aff. L. Rev. 431)

“In 2007, the Government Accounting Office (GAO) did a study on NMFS's proposed 2007 ALWTRP [Atlantic Large Whale Take Reduction Plan] and found it critically lacking in offering any reasonable expectation of possible success. Further, “its scientific stock assessments and entanglement reports . . . showed that--despite current regulatory measures--right and humpback whales are being seriously injured or killed by entanglements in commercial fishing gear at a rate that limits the species' ability to recover.” NMFS's current de facto policy of refusing to enforce ESA section 9 prohibitions to prevent entanglements of great whales practically discourages the innovation and adoption of whale-safe fishing technology. NMFS has also chosen to oppose private enforcement actions against the industry and to assist fishermen in winning these lawsuits. Despite the large number of incidents where whales have been injured or killed by vertical buoy lines and the fact that in many entanglement events the removed gear had tags on it identifying the owner, NMFS has never prosecuted a fisherman for an entanglement of a great whale under the ESA or MMPA.”

[Note: Info in brackets added by Ethos, but ellipses in original]

So the Governmental Accountability Office found that the NMFS plan to save whales lacks even reasonable expectation of success

2. Structural Inherency: No enforcer

Richard Max Strahan [Founder and chief science officer of Whale Safe USA] “20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Essay: A New Paradigm For Conservation Of Great Whales In The Urban Sea Of The United States--Species In Need Of A “Green Knight”” Boston College Environmental Affairs Law Review, 2009 (36 B.C. Envtl. Aff. L. Rev. 431)

“The Endangered Species Act of 1973 (ESA) replaced and built significantly on Congress's original endangered species legislation. Two improvements to the original 1966 legislation and

the 1969 amendments were sections 7 and 9 of the ESA. Section 7 of the Act provides that, absent an exemption from the Secretary of the Interior, all "Federal agenc[ies] shall . . . insure that any [authorized] action . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species" Further, section 9 of the ESA "applied broad 'take' prohibitions to all endangered animal species and allowed the prohibitions to apply to threatened animal species by special regulation." There are serious problems with the functionality of the improved ESA, however, in that it does not effectively establish an agency to oversee implementation of section 7 reviews, to enforce section 9 prohibitions, and otherwise oversee compliance by other government agencies with mandatory and nondiscretionary ESA duties. These statutory functions are largely left to the vagaries of citizen enforcement."

(NOTE: Ellipses in original print journal, not made by Ethos)

We already saw that humans are causing the right whale's inability to recover, but let us make this more specific in failure...

B. Human Cause.

Humans are the cause of current and future whale death—and not from whaling or fishing.

Dr. Jeremy Firestone [Associate Professor in the College of Marine and Earth Studies and a Senior Research Scientist in the Center for Carbon-Free Power Integration at the University of Delaware, USA. Molecular Biologist, Lawyer, Ph.D. in Public Policy]. "20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Article: Policy Considerations And Measures To Reduce The Likelihood Of Vessel Collisions With Great Whales" Boston College Environmental Affairs Law Review, 2009 (36 B.C. Env'tl. Aff. L. Rev. 389)

"Scientific research identifies two prime factors for the inability of the right whale to recover despite its protection from whaling--being struck by commercial vessels and becoming entangled in fishing gear, with vessel collisions alone accounting for more than half of deaths based on necropsies. This is a problem of particular concern given present trends that suggest the species will likely be extinct within two centuries."

Thus we found two causes: strikes and entanglement.

C. Impacts

We have two simple impacts here.

1. Goals Violated – The goal identified in the status quo, protecting whale population, is not being met.

Cinnamon Pinon Carlarne [Assistant Professor of Environmental Studies at the University of Cincinnati. J.D., Berkeley; B.C.L. from Oxford (the most highly esteemed masters-level qualification in the common law world); M.Sc. from Oxford; B.A. Baylor University.] "SAVING THE WHALES IN THE NEW MILLENNIUM: INTERNATIONAL INSTITUTIONS, RECENT DEVELOPMENTS AND THE FUTURE OF INTERNATIONAL WHALING POLICIES" Virginia Environmental Law Journal, 2005 (24 Va. Env'tl. L.J. 1)

“Each year at the annual meeting, the parties to the IWC evaluate and debate the current status of whale stocks. At IWC 56, the Commission summed up the present condition of whales by stating that: despite a long period of protection, several populations of great whales remain highly endangered and number 500 or less. These include all bowhead whale stocks apart from the Bering-Chukchi-Beaufort Seas stock that numbers over 10,000; gray whales in the western Pacific (those in the eastern Pacific, by contrast, number over 17,000); all stocks of northern right whales; and various stocks of blue whales. Some of the small Arctic bowhead populations are subjected to direct catches outside IWC regulations (a bowhead was taken in 2002 by Canadian Eskimos), or are killed by ship strikes or are bycaught in fishing gear. The Commission has attached great importance to trying to improve the survivorship of these stocks.”

2. Biodiversity Damaged

Dr. W.M. von Zharen [LL.M in International and Environmental Law/Admiralty Law; J.D.; Marine Policy Coordinator for the Texas Institute of Oceanography, Ed. D. in Anthropology and International Studies/Curriculum; Texas A&M; Graduate appointments in the Department of Oceanography and the Department of Geography; faculty member in the Departments of Maritime Administration and Marine Sciences; Former Attorney with Exxon Shipping; M.A.] “OCEAN ECOSYSTEM STEWARDSHIP” William and Mary Environmental Law and Policy Review, Fall, 1998 (23 Wm. & Mary Env'tl. L. & Pol'y Rev. 1)

“Taking into account the position of animals in food chains, the killing of one whale amounts to harvesting from three hundred to five hundred square kilometers of ocean area. The extermination of whales affects the entire ecosystem of the world oceans even more than overfishing. "Being at the top of the ocean's trophic chains, whales and other sea mammals play an immense role in stabilizing this ecosystem, maintaining its stable equilibrium.””

Observation Three: The Plan

Congress and the President shall sign into law the following three Mandates:

- 1) The federal management role, and necessary authority, for great whales shall be transferred from the National Marine Fisheries Service (NMFS) to the Marine Mammal Commission—thereby transferring to a commission that has no individuals who can profit from the taking of marine mammals.
- 2) The MMC shall be given authority to enforce ESA provisions 7 and 9 in regards to whales.
- 3) The MMC shall enforce 10 knot speed limits on the East Coast from March through May in key right whale migration areas and ports, and require whale-safe buoy line implementation within 2 years.

Funding: Current funding for NMFS' whale management shall be transferred to MMC, and \$50 million in additional funding shall be set aside for enforcement from the “federal wood utilization research” program's \$4.5bn.²

Enforcement: U.S. Coast Guard, MMC, NOAA

² From Citizens Against Government Waste website, 2009 Pig Book Summary, http://www.cagw.org/site/PageServer?pagename=reports_pigbook2009: **\$4,545,000** for wood utilization research in 10 states by 19 senators and 10 representatives. This research has cost taxpayers \$95.3 million since 1985. One would think that after 24 years of research all the purposes for one of the world's most basic construction materials would have been discovered.

Observation Four: Goals Fulfilled

A. Right Enforcement:

Richard Max Strahan [Founder and chief science officer of Whale Safe USA] “20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Essay: A New Paradigm For Conservation Of Great Whales In The Urban Sea Of The United States--Species In Need Of A “Green Knight”” Boston College Environmental Affairs Law Review, 2009 (36 B.C. Envtl. Aff. L. Rev. 431)

“Ethical standards of professional conduct should be enforced on all who are licensed under the ESA or the MMPA to conduct research on endangered whales. The need for professional ethical standards is especially strong for publicly funded researchers and those directly licensed by government agencies to do research on great whales under those statutes. Ethical standards for researchers need to provide public disclosure of field data about whales obtained in the course of licensed research (for example, accessibility of photographs and databases of whale sightings and locations). Licensed species conservation research should not be based on funding from commercial interests or agencies that promote commercial activity. Ethical conduct requires that transparency standards be imposed on agency scientists doing research and assisting in environmental reviews. Agency employees should not consult with commercial interests until reviews have been completed, and discussions with reviewing agency staff should be recorded and conducted under protocols that preserve the independence of the reviewing staff. NGOs that publicly advertise a commitment to protect wildlife should open themselves to public review and comment to insure that these purposes are served with objectivity and accuracy. The failure to protect great whales is in no small part due to such failures on the part of whale researchers and advocacy NGOs. Only researchers who become certified under professional ethical standards should be allowed to obtain research permits under the ESA or the MMPA. Even NGOs that professionally involve themselves with wildlife conservation should be subject to an ethics oversight certification.”

Basically, an agency independent of commercial interests is needed to ensure ethical standards are enforced for research of endangered whales. Makes perfect sense.

B. Buoy Lines Solve

Richard Max Strahan [Founder and chief science officer of Whale Safe USA] “20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Essay: A New Paradigm For Conservation Of Great Whales In The Urban Sea Of The United States--Species In Need Of A “Green Knight”” Boston College Environmental Affairs Law Review, 2009 (36 B.C. Envtl. Aff. L. Rev. 431)

“Fishing gear, and particularly vertical buoy lines, constantly pose a significant risk to entangle great whales whenever the two meet in close encounters. Regulations that are reasonable--and enforced--could almost entirely eliminate this threat. Otherwise the consequences will be to continue to expose endangered great whales to risk of extinction because reproducing numbers and the gene pool are already so limited. Because feasible technology and methodology exist to substantially reduce--if not largely eliminate--the hazards of whale entanglement in vertical buoy lines, the official regulatory focus on ground-lines by NMFS appears to be politically driven. Effective regulation strategies would focus on whale-safe buoy

lines and redesigning fishing seasons and zones to limit the time and placement of entangling gear. A recent study comparing lobster fishing in the Canadian and American portions of the Gulf of Maine shows that a large reduction of fishing effort would greatly reduce the entanglement risk posed by the fishery while reducing the total lobster catch only trivially. This also results in a substantial lessening of actual net cost per pound of catch. The straightforward regulatory logic and simplicity of requiring whale-safe vertical lines, moreover, is obvious.”

C. Shipping Strikes Reduceable

Dr. Michael J. Moore [Veterinarian, Ph.D. in the Woods Hole Oceanographic/Massachusetts Institute of Technology Joint Program in Biological Oceanography, worked for the International Whaling Commission on an Icelandic whaling ship] “20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Article: Boston College Environmental Affairs Law Review, 2009 Boston College Environmental Affairs Law Review, 2009 (36 B.C. Envtl. Aff. L. Rev. 309)

“The same dichotomy between commercial interests and species protection is presented by other threats to whales in coastal waters. The problem of vessel strikes is simpler in some ways than entanglement. There are two forms of vessel strike: sharp trauma, where animals at or near the surface are sliced by propeller blades, and blunt trauma, where a ship's bow or other blunt structure such as the keel hits a whale's skull or shatters its vertebra. In terms of mitigation efforts for vessel strikes, the most successful approach in the past decade has been mariner education. Nautical charts, for example, now contain information on right whale avoidance areas, how to recognize a right whale, and the like. There have been shipping lane adjustments in the Bay of Fundy area and Massachusetts Bay, subtly changing the vessel passage lanes on the basis of whale sighting data. In mid-October 2008 the National Oceanic and Atmospheric Administration issued operational measures for a North Atlantic right whale ship-strike reduction strategy, including reducing seasonal speed limits to ten knots in significant potential conflict areas, which is a significant improvement. In attempts to keep ships and whales separate, other experimental efforts have shown promising results. In these experiments, automatic ship location identification systems (automatic transponders) have been linked to receiving stations in cell towers in that region to determine which ships are avoiding designated conflict areas and which are not. It is planned for ship operators to receive a polite letter indicating that the ships have not avoided the conflict areas and suggesting that they do so.”

In conclusion,

D. Proactive Protection Required

Richard Max Strahan [Founder and chief science officer of Whale Safe USA] “20-Ton Canaries: The Great Whales Of The North Atlantic: Symposium Essay: A New Paradigm For Conservation Of Great Whales In The Urban Sea Of The United States--Species In Need Of A “Green Knight”” Boston College Environmental Affairs Law Review, 2009 (36 B.C. Envtl. Aff. L. Rev. 431)

“The waters off the northeast coast of the United States have been referred to as part of the Urban Sea. The development impacts of the great coastal cities do not stop at the docks of their ports but continue out into the ocean. The Urban Sea reflects the commerce of the East Coast and the huge volume of shipping flowing through the great ports of New York, Philadelphia, and Boston. It is impacted by pollution and detritus flowing from inland and port cities and cast off

by ships at sea. Its waters receive air pollution from inland industry and the smokestack emissions of ships. It is infused with noise reverberating out from vessels and Navy sonar. The coastal sea is also laced with thousands of installations of fishing gear from fishing fleets, all of which can kill great whales, and some of which are never retrieved by fishermen but remain as derelict "ghost gear" drifting with the currents, continuing to kill without purpose. Conditions in the Urban Sea have deteriorated to the point that great whales can no longer survive in these urbanized coastal waters without active protection."

That active protection is exactly what we are asking you to provide. (Save the whales. Peace out)

