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The Legal Cetacean: A Select Bibliography on Whales and International Whaling

AMY BURCHFIELD*

Introduction

Whales have captivated the human imagination for millennia. Indeed, evidence of the first whale hunting dates back to at least 6,000 B.C.¹ These incredible cetaceans have been a source of human food, fuel and tools, and have inspired art, myth and literature around the globe. Legal issues affecting whales are varied and far reaching. Only since the mid 20th century, with the establishment of the International Whaling Commission (IWC) under the terms of the International Convention for the Regulation of Whaling (ICRW) have whales benefited from any type of conservation effort.

Despite the moratorium on commercial whaling in effect since 1986,² whales continue to be threatened by ship collisions, sonar, and climate change. Although much criticized, research on certain species is conducted under the auspices of scientific whaling. Native peoples struggle to maintain their traditional whaling customs and protect their cultural heritage. Conservation places a value on whales *per se*, and may be supported by commercialized whale watching. Whatever the area, whales are guaranteed to

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¹ Petroglyphs of large whales discovered at the Neolithic archeological site at Bangu-Dae in South Korea show evidence of whale hunting dating between 6,000 – 1,000 B.C. See Lee, Sang-Mog and Daniel Robineau, “Les cétacés des gravures rupestres néolithiques de Bangu-dea (Corée du Sud) et les débuts de la chasse à la baleine dans le Pacifique nord-ouest.” *L’Anthropologie* 108 (2004): 137-151.

² Despite recent challenges, the moratorium on commercial whaling survives into its second decade. See “Whaling Moratorium Upheld.” *Environmental Policy and Law* 37 (2007): 381-382.

fascinate humans for millennia to come, so long as conservation efforts are successful.

The body of legal literature on international whaling is a subset of the broader area of international environmental law. Researchers can find general non-legal bibliographies on whales³ and sections on whales and whaling within generally-focused international environmental law bibliographies.⁴ A recent narrowly-focused bibliography on admiralty and maritime law included a very brief section on whaling.⁵ What is lacking in the literature is an extensive bibliography devoted solely to the legal and policy issues concerning whales and whaling. This bibliography is intended to meet this need.

The materials in this bibliography cover a ten-year period from 1998-2008.⁶ Except for the section on major treaties, the resources are organized by books and journal articles,⁷ and are divided into the following categories: 1. Major Treaties; 2. International Whaling Commission; 3. Whaling Policy; 4. Conservation & Sustainability; 5. Country Materials; 6. Scientific Whaling; 7. Aboriginal Subsistence Whaling, Cultural Heritage & Indigenous Rights; 8. Sonar; 9. Climate Change; 10. Whale Watching. Each topic starts with a brief introductory paragraph.

This bibliography was compiled using a number of library catalogs, indexes and databases. For books, the OhioLINK and WorldCat catalogs were most useful. Journal articles were found using primarily Index to Legal Periodicals, Index to Foreign Legal Periodicals, HeinOnline, LexisNexis, and Westlaw. JSTOR and Academic Search Complete were used to a lesser extent. Materials published in the United States predominate, although an

³ See for example <http://www.helsinki.fi/~lauhakan/whale/literature/nfiction.html> Visited on Oct. 9, 2008.

⁴ Thomas, William L., "Select Bibliography of Articles and Books in International Environmental Law (1997-Present)." *Georgetown International Environmental Law Review* 13 (2000): 47-268.

⁵ Jayasuriya, H. Kumar Percy and Melanie Oberlin, "Admiralty and Maritime Law Articles Published in Non-Marine Law Journals." *Journal of Maritime Law and Commerce* 39 (2008): 229-273.

⁶ Research for this bibliography was concluded in September 2008.

⁷ Student authored articles are noted as such. The author is encouraged by the number of student authored articles on whales and whale conservation, as this seems to show a real concern among budding lawyers. The future legal protection of whales could depend on their expertise and engagement.

effort was made to include English-language materials published in other countries as well. When the topic of an article was not evident from the title, the article was examined to determine its topic.

1. Major Treaties

The main treaty on whaling is the International Convention for the Regulation of Whaling (ICRW), which established the International Whaling Commission (IWC). The Commission was established to encourage research and to investigate, collect and analyze statistical information on whales and whale stocks (Article 4). Additionally, the IWC adopts regulations for the conservation and utilization of whale stocks (Article 5). Since the adoption of the ICRW, several regional treaties have more specifically addressed issues of particular whale stocks, such as the ASCOBANS treaty governing the conservation of cetaceans in the Baltic Sea and other areas (see below). The United Nations Convention on the Law of the Sea (UNCLOS), while dealing with many other issues besides whales, includes an article specifically highlighting the need for the conservation of cetaceans.

International Convention for the Regulation of Whaling (ICRW 1946) and Protocol (1959) <http://www.iwcoffice.org/commission/convention.htm>⁸

Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS 2001) http://www.cms.int/pdf/en/summary_sheets/accobams.pdf

Agreement on the Conservation of Small Cetaceans of The Baltic, North East Atlantic, Irish and North Seas (ASCOBANS 2008) http://www.cms.int/species/ascobans/asc_text.htm

Agreement on Co-operation in Research, Conservation and Management of Marine Mammals in North America (1992) <http://www.internationalwildlifelaw.org/nam.html>

Memorandum of Understanding for the Conservation of Cetaceans and Their Habitats in the Pacific Islands Region (2006) http://www.cms.int/species/pacific_cet/text.htm

⁸ The treaty websites in this section were visited on Oct. 9, 2008.

United Nations Convention on the Law of the Sea (UNCLOS 1994)
http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf

Article 65 of UNCLOS places special emphasis on cetaceans: “States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.”

2. International Whaling Commission

The International Whaling Commission (IWC) was set up under the terms of the 1946 International Convention for the Regulation of Whaling (ICRW). The main duty of the IWC is to review and monitor the standards established in the ICRW. These standards include complete protection of certain species, establishing whale sanctuaries, monitoring whale stocks, and compiling scientific and statistical reports. Membership in the IWC is open to any country that agrees to the terms of the ICRW. The IWC currently has 82 member nations.⁹

Burns, William C.G., “The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission: Toward a New Era for Cetaceans?” *Review of European Community and International Environmental Law* 13 (2004): 72-84.

———., “The 53rd Meeting of the International Whaling Commission and the Future of Cetaceans in a Changing World.” *Journal of International Wildlife Law and Policy* 4 (2001): 221-237.

———., “The International Whaling Commission and the Future of Cetaceans in a Changing World.” *Review of European Community and International Environmental Law* 11 (2002): 199-210.

Fletcher, Kristen, “The 49th Annual Meeting of the International Whaling Commission: Prelude to the Next Fifty Years.” *Journal of International Wildlife Law and Policy* 1 (1998): 134-142.

⁹ See IWC Members and Commissioners
<http://www.iwcoffice.org/commission/members.htm>. Last visited Oct. 9, 2008.

Gillespie, Alexander, "Iceland's Reservation at the International Whaling Commission." *European Journal of International Law* 14 (2003): 977-998.

———., "Transparency in International Environmental Law: A Case Study of the International Whaling Commission." *Georgetown International Environmental Law Review* 14 (2001): 333-348.

———., "The Search for a New Compliance Mechanism Within the International Whaling Commission." *Ocean Development and International Law* 34 (2003): 349-367.

Harrop, Stuart R., "From Cartel to Conservation to Compassion: Animal Welfare and the International Whaling Commission." *Journal of International Wildlife Law and Policy* 6 (2003): 79-104.

Lindemann, Jeffrey D., student author, "The Dilemma of the International Whaling Commission: The Loophole Provisions of the Commission vs. The World Conscience." *Detroit Journal of International Law and Practice* 7 (1998): 491-500.

Morgera, Elisa, "Whale Sanctuaries: An Evolving Concept within the International Whaling Commission." *Ocean Development and International Law* 35 (2004): 319-338.

Osherenko, G., "Environmental Justice and the International Whaling Commission: Moby-Dick Revisited." *Journal of International Wildlife Law and Policy* 8 (2005): 221-239.

Ruffle, Adrienne M., student author, "Restructuring the International Whaling Commission: Suggestions to Strengthen the Conservation Effort." *Brooklyn Journal of International Law* 27 (2002): 639-671.

Schweder, Tore, "Distortion of Uncertainty in Science: Antarctic Fin Whales in the 1950s." *Journal of International Wildlife Law and Policy* 3 (2000): 73-92.

Schiffman, H.S., "The International Whaling Commission: Challenges From Within and Without." *ILSA Journal of International and Comparative Law* 10 (2004): 367-375.

Simpson, Karen, "The 51st Annual Meeting of the International Whaling Commission: One Minute Before Midnight?" *Journal of International Wildlife Law and Policy* 2 (1999): 338-352.

Stoett, Peter J., "Of Whales and People: Normative Theory, Symbolism, and the IWC." *Journal of International Wildlife Law and Policy* 8 (2005): 151-175.

Tumerelle, Alice, "The Reform of the Assessment of Financial Contributions to the International Whaling Commission: A Step Toward More Participation from Developing Countries in the International Regulation of Whaling?" *Colorado Journal of International Environmental Law and Policy* 13 (2002): 333-376.

"U.S. Role in 57th Annual Meeting of the International Whaling Commission." *The American Journal of International Law* 99 (2005): 911-911.

3. Whaling Policy

The section includes materials dealing with whaling policy in general, or suggesting changes to specific aspects of whaling policy. A focus within the literature is on international and regional cooperation in whaling policy.

Books

Burns, William C.G., and Alexander Gillespie, eds., *The Future of Cetaceans in a Changing World*. Ardsley, NY: Transnational Publishers, 2003. xxvii, 457 p.

Gillespie, Alexander. *Whaling Diplomacy: Defining Issues in International Environmental Law*. Cheltenham, UK; Northampton, MA: Edward Elgar, 2005. xxii, 509 p.

Articles

Bhargava, Michael, student author, "Of Otters and Orcas: Marine Mammals and Legal Regimes in the North Pacific." *Ecology Law Quarterly* 32 (2005): 939-988.

Carlarne, Cinnamon Pinon, "Saving the Whales in the New Millennium: International Institutions, Recent Developments and the Future

of International Whaling Policies.” *Virginia Environmental Law Journal* 24 (2005): 1-48.

Hardy, Brettny, student author, “A Regional Approach to Whaling: How the North Atlantic Marine Mammal Commission Is Shifting the Tides for Whale Management.” *Duke Journal of Comparative and International Law* 17 (2006): 169-198.

Heisler, Richard, student author, “A Whale of a Tale: NRDC v. U.S. Navy and the Attempt to Exempt the Exclusive Economic Zone from the National Environmental Policy Act.” *Southwestern Journal of Law and Trade in the Americas* 10 (2003/2004): 125-170.

Setear, John K., “Can Legalization Last?: Whaling and the Durability of National (Executive) Discretion.” *Virginia Journal of International Law* 44 (2004): 711-757.

Teaney, Derek O., student author, “The Insignificant Killer Whale: A Case Study of Inherent Flaws in the Wildlife Services’ Distinct Population Segment Policy and a Proposed Solution.” *Environmental Law* 34 (2004): 647-702.

Tomlinson, Zachary, student author, “Abrogation or Regulation? How *Anderson v. Evans* Discards the Makah’s Treaty Whaling Right in the Name of Conservation Necessity.” *Washington Law Review* 78 (2003): 1101-1129.

“United States Whaling Policy.” *The American Journal of International Law*, 99 (2005): 255-255.

4. Conservation & Sustainability

The frequent focus of literature in this area is on individual species and specific marine environments. An emphasis is placed on regional or local approaches to conservation and sustainability. Policy makers can learn from the successes and failures of these individual efforts, and devise improved measures for conservation and sustainability. Environmental governance policies will need to strike a balance between total conservation on the one hand, and a sustainable whaling market on the other. Legal scholarship on whale conservation and sustainability contributes to local, regional, and international policy development.

Books

Friedheim, Robert L., ed., *Toward a Sustainable Whaling Regime*. Seattle: University of Washington Press; Edmonton: Canadian Circumpolar Institute Press, 2001. 382 p.

Articles

Bjorndal, Trond, and Jon M. Conrad, "A Report on the Norwegian Minke Whale Hunt." *Marine Policy* 22 (1998): 161-174.

Burns, William C., "The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area: A Regional Response to the Threats Facing Cetaceans." *Journal of International Wildlife Law and Policy* 1 (1998): 113-132.

Currie, Duncan, "Whales, Sustainability and International Environmental Governance," *Review of European Community and International Environmental Law* 16 (2007): 45-57.

Detsky, Mark, student author, "Developments in Conservation and Living Resources: The Murky Sea over the Magnificent Whale." *Colorado Journal of International Environmental Law and Policy* 2002 Yearbook (2002): 35-42.

Donovan, Craig T., "Insights - Puget Sound's Ailing Orcas Receive ESA Protection." *Natural Resources and Environment* 21 (2007): 66-68.

Edmonds, Sara, student author, "A Whale's Tale: Efforts to Save Cook Inlet, Alaska Beluga Whale." *Ocean and Coastal Law Journal* 7 (2001): 131-165.

Gillespie, Alexander, "Environmental Threats to Cetaceans and the Limits of Existing Management Structures." *New Zealand Journal of Environmental Law* 6 (2002): 97-138.

Larson, Linda R., and Jessica Ferrell, "Orcinus and Oncorhynchus: Will Saving Puget Sound Orcas and Salmon Save an Ecosystem?" *Natural Resources and Environment* 22 (2007): 26-29, 58.

Luster, Jeffrey P., "The International Maritime Organization's New Mandatory Ship Reporting System for the Northern Right Whale's Critical

Habitat: A Legitimate Approach to Strengthening the Endangered Species Act?" *Naval Law Review* 46 (1999): 153-169.

Matera, Anthony, "Whale Quotas: A Market-Based Solution to the Whaling Controversy," *Georgetown International Environmental Law Review* 13 (2000): 23-45.

Norlen, Doug and David Gordon, "Eschrichtius (Whale) and Hucho (Salmon): Multilateral Development Banks' EIA Process and the Costs to Biodiversity." *Natural Resources and Environment* 22 (2007): 30-35.

Young, Jock W., "Do Large Whales Have an Impact on Commercial Fishing in the South Pacific Ocean?" *Journal of International Wildlife Law and Policy* 3 (2000): 253-275.

5. Country Materials

See also *Scientific Whaling*

Japan's policy of scientific whaling (see next section) has generated a flood of scholarly commentary and criticism. The leading case in this area is *Humane Society International v. Kyodo Senpaku Kaisha Ltd*,¹⁰ litigated in the Federal Court of Australia. A claim was brought against a Japanese whaling company for killing minke, fin and humpback whales in the Australian Whale Sanctuary. The court in *Human Society* ordered the respondent company to be restrained from whaling in the Sanctuary, unless otherwise authorized by law. Scholars have also analyzed the whaling practices of Iceland, Canada, and other nations.

Ackerman, Reuben B., student author, "Japanese Whaling in the Pacific Ocean: Defiance of International Whaling Norms in the Name of "Scientific Research," Culture and Tradition." *Boston College International and Comparative Law Review* 25 (2002): 323-341.

Blay, Sam and Karen Bubna-Litic, "The Interplay of International Law and Domestic Law: The Case of Australia's Efforts to Protect Whales." *Environmental and Planning Law Journal* 23 (2006): 465-489.

¹⁰ *Humane Society International Inc. v. Kyodo Senpaku Kaisha Ltd*, 2004 FCA 1510; (2004) 212 ALR 551.

“Blocking of Iceland’s Effort to Join Whaling Convention.” *The American Journal of International Law* 96 (2002): 712-715.

David, R., “Taking on Japanese Whalers: The Humane Society International Litigation.” *University of Tasmania Law Review* 24 (2005): 78-90.

Davis, Ruth, “Enforcing Australian Law in Antarctica: The HSI Litigation.” *Melbourne Journal of International Law* 8 (2007): 142-158.

Friedman, David M., student author, “Iceland’s Call to Extract the Harpoon from Commercial Whaling.” *Suffolk Transnational Law Review* 28 (2005): 303-324.

Gillespie, Alexander, “Humane Killing: A Recognition of Universal Common Sense in International Law.” *Journal of International Wildlife Law and Policy* 6 (2003): 1-29.

Greenberg, Eldon V.C., et al., “Japan’s Whale Research Program and International Law.” *California Western International Law Journal* 32 (2002): 151-209.

Henderson, Ramsey, student author, “The Future of Whaling: Should the International Whaling Commission Create a Broadened Cultural Exemption to the Whaling Moratorium for Iceland?” *Georgia Journal of International and Comparative Law* 33 (2005): 655-683.

Hirata, K., “Why Japan Supports Whaling.” *Journal of International Wildlife Law and Policy* 8 (2005): 129-149.

Ishii, Atsushi and Ayako Okubo, “An Alternative Explanation of Japan’s Whaling Diplomacy in the Post-Moratorium Era.” *Journal of International Wildlife Law and Policy* 10 (2007): 55-87.

McDorman, Ted L., “Canada and Whaling: An Analysis of Article 65 of the Law of the Sea Convention.” *Ocean Development and International Law* 29 (1998): 179-194.

McGrath, Chris, “Injunction Granted in Japanese Whaling Case.” *Environmental and Planning Law Journal* 25 (2008): 77-80.

———., “Japanese Whaling Case Appeal Succeeds.” *Environmental and Planning Law Journal* 23 (2006): 333-336.

———., “The Japanese Whaling Case.” *Environmental and Planning Law Journal* 22 (2005): 250-257.

Mossop, Joanna, “When Is a Whale Sanctuary Not a Whale Sanctuary? Japanese Whaling in Australian Antarctic Maritime Zones.” *Victoria University of Wellington Law Review* 36 (2005): 757-773.

Sand, Peter H., “Japan’s ‘Research Whaling’ in the Antarctic Southern Ocean and the North Pacific Ocean in the Face of the Endangered Species Convention (CITES).” *Review of European Community and International Environmental Law* 17 (2008): 56-71.

Stephens, Tim, “Japanese Whaling in Antarctica: Humane Society International Inc. v. Kyodo Senpaku Kaisha Ltd.” *Review of European Community and International Environmental Law* 16 (2007): 243-246.

Triggs, G., “Japanese Scientific Whaling: An Abuse of Right or Optimum Utilisation?” *Asia-Pacific Journal of Environmental Law* 5 (1999): 124-150.

“U.S. Sanctions against Japan for Whaling.” *The American Journal of International Law* 95 (2001): 149-152.

Vargas, Jorge, “The California Gray Whale: Its Legal Regime under Mexican Law.” *Ocean and Coastal Law Journal* 12 (2007): 213-244.

6. Scientific Whaling

See also Country Materials, especially articles on Japan

Scientific whaling refers to the killing of whales for scientific research purposes. Under Article VII of the ICRW, IWC member states are permitted to issue permits to their nationals for scientific whaling. Since the 1986 moratorium on commercial whaling, Japan, Iceland, and Norway have issued permits for scientific whaling. This practice has encountered avid criticism from other countries and environmental groups. Readers will find many additional articles on scientific whaling in the Country Materials section of this bibliography, especially dealing with Japan.

Gillespie, Alexander, "Whaling Under a Scientific Auspice: The Ethics of Scientific Research Whaling Operations." *Journal of International Wildlife Law and Policy* 3 (2000): 1-49.

Harris, A.W., "The Best Scientific Evidence Available: The Whaling Moratorium and Divergent Interpretations of Science." *William and Mary Environmental Law and Policy Review* 29 (2005): 375-450.

Schiffman, Howard S., "Scientific Research Whaling in International Law: Objectives and Objections." *ILSA Journal of International and Comparative Law* 8 (2002): 473-485.

Wansbrough, Tanya, "On the Issue of Scientific Whaling: Does the Majority Rule?" *Review of European Community and International Environmental Law* 13 (2004): 333-339.

Yagi, Nobuyuki, "The Status of Scientific Research Whaling in International Law." *ILSA Journal of International and Comparative Law* 8 (2002): 487-498.

7. Aboriginal Subsistence Whaling, Cultural Heritage & Indigenous Rights

Aboriginal subsistence whaling refers to the traditional hunting of whales by indigenous peoples. The IWC treats aboriginal subsistence whaling differently than commercial whaling. Under current IWC regulations, aboriginal subsistence whaling is permitted for Denmark, the Russian Federation, St. Vincent and The Grenadines, and the U.S.¹¹ The legal literature in this area often focuses on conflict between environmental concerns and cultural heritage rights of native peoples.

Books

Freeman, Milton M.R., et al., *Inuit, Whaling, and Sustainability*. Walnut Creek, CA: Altamira Press, 1998. 208 p.

¹¹ See International Whaling Commission, "Aboriginal Subsistence Whaling" at <http://www.iwcoffice.org/conservation/aboriginal.htm> (visited Oct. 15, 2008).

Articles

Bakalar, Elizabeth M., student author, "Subsistence Whaling in the Native Village of Barrow: Bringing Autonomy to Native Alaskans outside the International Whaling Commission." *Brooklyn Journal of International Law* 30 (2005): 601-639.

Bradford, William C., "'Save the Whales' v. Save the Makah {Metcalf v. Daley, 214 F.3d 1135 (9th Cir. 2000)}: Finding Negotiated Solutions to Ethnodevelopmental Disputes in the New International Economic Order." *St. Thomas Law Review* 13 (2000): 155-220.

Creason, Anne M., student author, "Culture Clash: The Influence of Indigenous Cultures on the International Whaling Regime." *California Western International Law Journal* 35 (2004): 83-125.

Decker, Alyson, student author, "Save the Whales—Save the Whalers—Waits, Just Save the International Whaling Commission: A Fresh Look at the Controversy Surrounding Cultural Claims to Whale." *Southern California Interdisciplinary Law Journal* 16 (2006): 253-282.

Firestone, Jeremy and Jonathan Lilley, "Aboriginal Subsistence Whaling and the Right to Practice and Revitalize Cultural Traditions and Customs." *Journal of International Wildlife Law and Policy* 8 (2005): 177-219.

Fletcher, Kristen M., "New Environmental Assessment Required in Makah Whale Hunt Metcalf v. Daley, 214 F.3d 1135 (9th Cir. 2000)." *Journal of International Wildlife Law and Policy* 3 (2000): 277-282.

Fowles, Rosemary, student author, "Metcalf v. Daley {214 F.3d 1135 (9th Cir. 2000)}: Consideration of the Significant Impact on the Gray Whale Population in an Environmental Assessment." *Ocean and Coastal Law Journal* 6 (2001): 397-411.

Gillespie, Alexander, "Aboriginal Subsistence Whaling: A Critique of the Inter-Relationship Between International Law and the International Whaling Commission." *Colorado Journal of International Environmental Law and Policy* 12 (2001): 77-139.

Givens, Geof H., "Multicriterion Decision Merging: Competitive Development of an Aboriginal Whaling Management Procedure." *Journal of the American Statistical Association* 94 (1999): 1003-1014.

Harris, A.W., "Making the Case for Collective Rights: Indigenous Claims to Stocks of Marine Living Resources." *Georgetown International Environmental Law Review* 15 (2003): 379-428.

Hodges, Brian Trevor, student author, "The Cracking Façade of the International Whaling Commission as an Institution of International Law: Norwegian Small-Type Whaling and the Aboriginal Subsistence Exemption." *Journal of Environmental Law and Policy* 15 (2000): 295-328.

Jenkins, Leesteffy, and Cara Romanzo, "Makah Whaling: Aboriginal Subsistence or a Stepping Stone to Undermining the Commercial Whaling Moratorium?" *Colorado Journal of International Environmental Law and Policy* 9 (1998): 71-114.

Kato, Kumi, "Prayers for the Whales: Spirituality and Ethics of a Former Whaling Community—Intangible Cultural Heritage for Sustainability." *International Journal of Cultural Property* 14 (2007): 283-313.

Miller, Robert J., "Exercising Cultural Self-Determination: The Makah Indian Tribe Goes Whaling." *American Indian Law Review* 25 (2000/2001): 165-273.

Palazzo, José Truda, Jr., "Whose Whales? Developing Countries and the Right to Use Whales by Non-Lethal Means." *Journal of International Wildlife Law and Policy* 2 (1999): 69-78.

Roghair, David L., student author, "Anderson v. Evans: Will Makah Whaling Under the Treaty of Neah Bay Survive the Ninth Circuit's Application of the MMPA?" *Journal of Environmental Law and Litigation* 20 (2005): 189-211.

Rowland, Thomas P., "Metcalf v. Daley {214 F.3d 1135 (9th Cir. 2000)}: The Makah Get Harpooned by NEPA." *Gonzaga Law Review* 36 (2000/2001): 395-421.

Scheiber, H. N., "Historical Memory, Cultural Claims, and Environmental Ethics in Jurisprudence of Whaling Regulation." *Ocean and Coastal Management* 38 (1998): 5-40.

Wagner, Diana, student author, "Competing Cultural Interests in the Whaling Debate: An Exception to the Universality of the Right to Culture." *Transnational Law and Contemporary Problems* 14 (2004): 831-864.

8. Sonar

The use of sonar for military training purposes pits environmental concerns against national security. In early October 2008, the United States Supreme Court heard oral arguments in a case addressing this issue, *Winter v. Natural Resources Defense Council*.¹² Leading up to the case, a Californian district court had enjoined the U.S. Navy from using mid-frequency sonar during training exercises due to the harm such sonar causes whales and other marine mammals. The Court of Appeals for the Ninth Circuit affirmed the decision. A Supreme Court decision in this case will further define the legal standard that will be applied to acoustic pollution levels in the oceans. Whales and sonar usage is, and is likely to continue to be, a fruitful area for legal discourse.

Cihlar, Nate, "The Navy and Low Frequency Active Sonar: Stripping the Endangered Species Act of Its Authority." *William and Mary Environmental Law and Policy Review* 28 (2004): 913-949.

Dotinga, H., "Acoustic Pollution in the Oceans: The Search for Legal Standards." *Ocean Development and International Law* 31 (2000): 151-182.

Reynolds, Joel R., "Submarines, Sonar, and the Death of Whales: Enforcing the Delicate Balance of Environmental Compliance and National Security in Military Training." *William and Mary Environmental Law and Policy Review* 32 (2008): 759-802.

Van Dyke, Jon M., "More Bad News for the Whales." *Natural Resources and Environment* 19 (2004): 20-22, 80.

9. Climate Change

¹² Donald C. Winter, Secretary of the Navy, et al., v. Natural Resources Defense Council, Inc., et al., 518 F.3d 658 (9th Cir. 2008), *cert. granted*, (U.S. June 23, 2008) (No. 08-55054).

Whales, like all other life on Earth, are affected by climate change. It should be the role of the legal community to translate the science of climate change into effective laws, regulations, and policies to combat this phenomenon. Legal scholarship is in the beginning stages of exploring the impact of climate change and the ways it affects cetaceans.

Burns, William C.G., "From the Harpoon to the Heat: Climate Change and the International Whaling Commission in the 21st Century." *Georgetown International Environmental Law Review* 13 (2001): 335-359.

Carlarne, Cinnamon, "Climate Change – The New “Superwhale” in the Room: International Whaling and Climate Change – Too Much in Common?" *Southern California Law Review* 80 (2007): 753-791.

10. Whale Watching

Whales were once extremely valuable dead. In today's economy, meat, bone, blubber, and oil from dead whales is less economically essential than in centuries past. With the increasing popularity of whale watching, whales can potentially generate more profit as a living natural resource than as food, oil or raw material. Legal scholarship is beginning to explore what regulations and policy measures should be adopted in order to exploit whale watching in a profitable and environmentally sound manner.

Boisvert, Ian, student author, "Puget Sound Orcas, Vessel Noise, and Whale-watching, A Licensing Program to Overcome the Problem of the ESA's Economically-blind "Take" Rule." *Ocean and Coastal Law Journal* 10 (2004/2005): 117-155.

Bridgewater, Carrie B., student author, "The Next Step in North Atlantic Whale Protection: A Closer Look at Whale-Watch Guidelines for the Northeast." *Ocean and Coastal Law Journal* 6 (2001): 347-369.