



# UNIVERSITY OF ALBERTA FACULTY OF LAW

## **CANADA-UNITED STATES SOUTHERN RESIDENT KILLER WHALE CONSERVATION: THE CASE FOR NORTH AMERICA'S FIRST TRANSBOUNDARY MARINE PROTECTED AREA**

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*“uplifting the whole people”*

— HENRY MARSHALL TORY, FOUNDING PRESIDENT, 1908

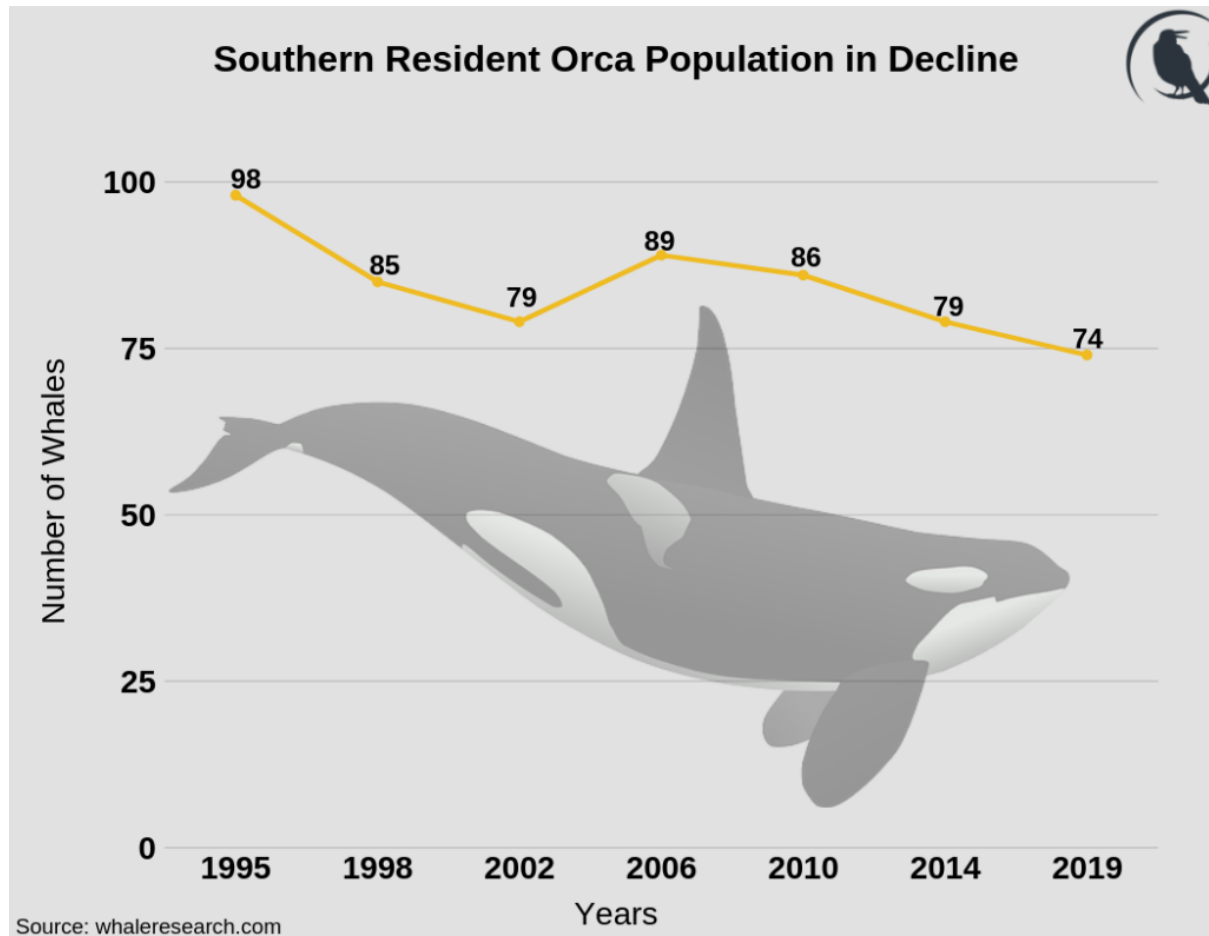


## In Brief

- SRKW – conservation status & critical habitat
- Art. 65 of the *United Nations Convention on the Law of the Sea* + international obligation(s)
- Novel forms of cooperation, including the possibility of North America's first transboundary MPA

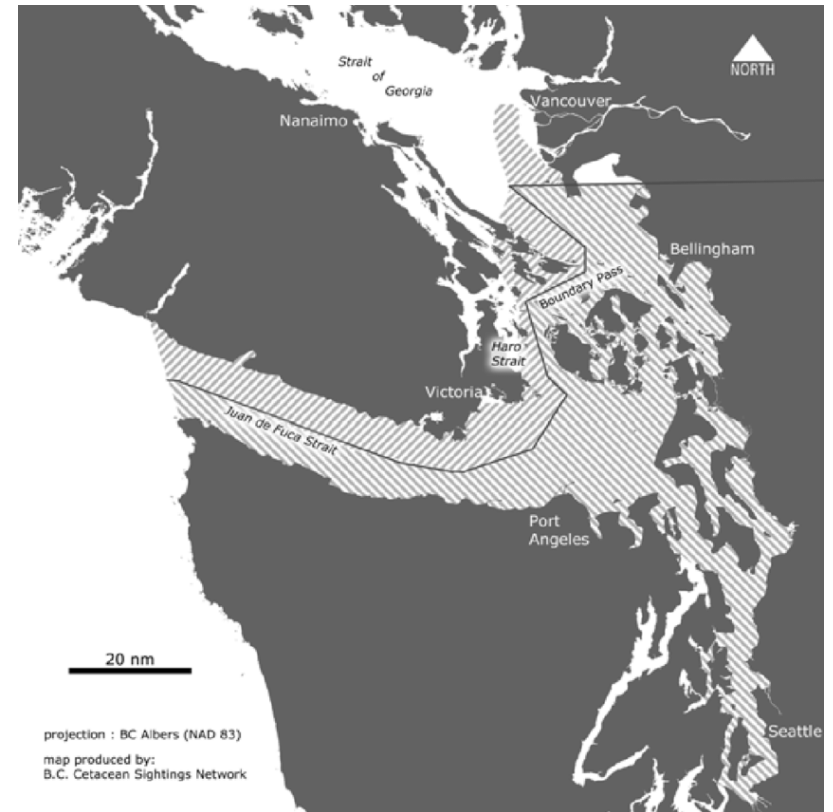
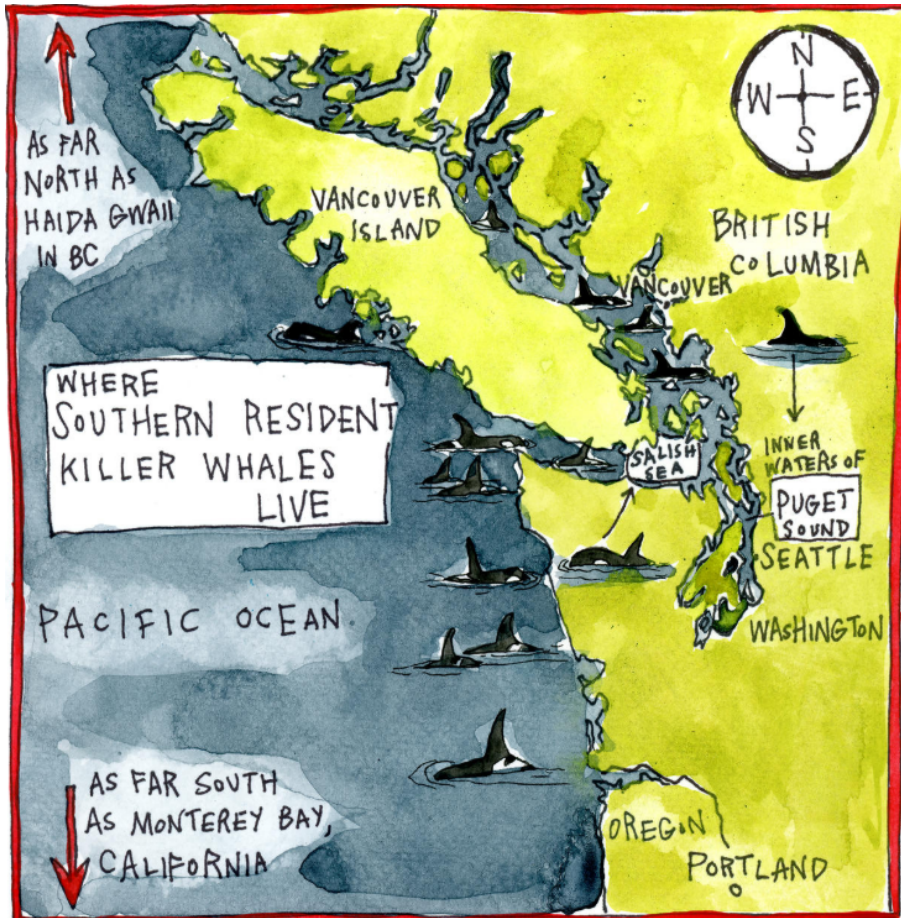


## SRKW – Status & Critical Habitat





## SRKW – Status & Critical Habitat



Source: NRDC



# ***United Nations Convention on the Law of the Sea***

## ***Article 65 Marine mammals***

Nothing in this Part [on living marine resource conservation in the EEZ] restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. 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.

- Binds Canada, which has ratified *UNCLOS*
- Arguably binds the United States as customary international law; President Clinton's statement to Congress in 1997 regarding Inuit Bowhead whale hunt
- International organizations? IWC, FAO and UNEP + others?





## Canada-US Cooperative SRKW

1) NOAA led efforts to treat and feed J50 (Scarlet) in 2018. Partner organizations included: Canada's DFO, Lummi Nation, Vancouver Aquarium, and SeaWorld



2) The Pacific Salmon Commission, under the auspices of the *Pacific Salmon Treaty*, concluded renewal of Chapter 3 ("Chinook Salmon") of Annex IV in 2019



## Salish Sea Transboundary MPA?

- Shared waters that are the primary summering grounds of the SRKW
- The Canadian *National Framework for Canada's Network of MPAs* and America's *Framework for the National System of Marine Protected Areas* both:
  - Espouse the virtues of networked MPAs based on ecological principles that serve to aid fisheries recovery, assist species migration, coordinate vessel traffic conditions, and enable adaptive management/ecosystem resiliency
  - Speak to the need for shared governance and potential co-management
  - Recognize the value of international cooperation and coordination to achieve the objectives of
  - Contemplate the need to increase MPA development and implementation



## Salish Sea Transboundary MPA?

- Presently, there are no transboundary MPAs in North America
- Benefits, in this context:
  - Expansion to capture ecosystem-level requirements for the SRKW
  - Coordination of fishing and vessel-related conservation measures and regulatory harmonization
  - Source of new protections for SRW critical habitat that enhances existing protections under *SARA* or the *ESA*
  - Opportunity for precedent-setting action that could spur further coordinated action (especially in the Arctic)





## Salish Sea Transboundary MPA?

- Sources of inspiration can be found in freshwater management (*Great Lakes Water Quality Agreement*), terrestrial conservation (Y2Y), or through jurisdictional comparison (e.g., Pelagos Sanctuary, which serves marine mammals in the Mediterranean Sea)
- Is there an international organization that could help coordinate or develop a Salish Sea SRKW MPA?
  - Commission for Environmental Cooperation, pursuant to the 1994 *North American Agreement on Environmental Cooperation*
  - Has completed a series of studies on MPA, but does not have authority to designate or administer protected areas
  - Could serve as a source of information to legitimize the project