Amicus Brief: *The Rights of Whales* ([redacted])

Introduction

In *Ref: Los Derechos de las Ballenas*, Nuestro Futuro and the Whales in their own right are asking a district court in Mexico City to designate the Gulf of California a critical habitat. In support of the case, the More-Than-Human-Life (MOTH) Program at NYU Law submitted an amicus brief demonstrating how the recognition of whales as rights holders is a logical and legally feasible development of contemporary environmental and human rights law — one capable of producing concrete, enforceable obligations backed by the best available science to protect whales and the ecosystems in which they are embedded.

Rights of Nature is a global legal development recognizing that ecosystems and other components of the natural world, including individual animals and entire species, are subjects of legal rights that can be asserted and protected through legal institutions.[1] Legal systems across six continents have recognized rivers, forests, lagoons, and individual animals as legal persons or subjects of rights.[2] The amicus argues that recognizing whales in the Gulf of California as holders of rights would not be an innovation of the Mexican court but an application of existing and familiar legal principles.

The amicus addresses three core questions: Is recognizing Nature as a subject of rights consistent with existing law? Can the rights of whales in the Gulf of California be specified with sufficient precision to be administered? Can recognition of these rights produce concrete and enforceable obligations? This report summarizes how the amicus addresses the three core questions.

1. **Is recognizing Nature as a subject of rights consistent with existing law?**

Recognition of the Rights of Nature is a natural extension of existing environmental law, not a departure from it. The precautionary principle and *in dubio pro natura* are two widely accepted principles in traditional environmental law that the Mexican Supreme Court itself applied in the 2018 *Laguna del Carpintero* decision. The Inter-American Court of Human Rights itself has stated that recognizing Nature as a subject of rights "emphasizes its structural role in the vital balance of the conditions that make this planet habitable."[3] Rights of Nature simply provides a procedural vehicle for actualizing this status.

One of the earliest articulations of the precautionary principle can be found in the 1982 World Charter for Nature, which grounded the principle in nature's intrinsic value by declaring that

every form of life deserves "respect regardless of its worth to man."[4] The precautionary principle provides that when an action threatens serious or irreversible harm to the environment, a lack of full scientific certainty is not a reason to delay measures that prevent that harm. This principle treats ecological integrity as a protected interest and places the burden of uncertainty on the actors proposing potentially harmful activities. In 2025, the International Court of Justice advised that the precautionary principle is "an integral part of the general obligation of due diligence under the duty to prevent significant harm to the environment" such that it "guides States in the determination of the required standard of conduct in fulfilling their customary duty."[5] The principle has been embodied in binding treaties and domestic laws and has been given effect through both international and domestic courts, long before the development of Rights of Nature.[6]

In dubio pro natura is another principle that guides courts, administrative agencies, and other decision-makers to interpret legal uncertainties and ambiguities in the manner most protective of the environment.[7] The Superior Tribunal de Justiça in Brazil court has construed this principle to allow for monetary and injunctive relief, if violated.[8] Ecuador's Constitution requires that, where there is doubt, environmental provisions must be read in the light most favorable to nature.[9] The Mexican Supreme Court went further. It held that the two principles are linked: where there is uncertainty, the precautionary principle governs and triggers the duty to protect nature. *In dubio pro natura*, however, is a general mandate of environmental justice: in any environmental conflict, the reading that best protects nature should prevail, whether or not there is scientific uncertainty.[10]

Recognition of the Rights of Nature is also a coherent development of human rights law. Human rights depend on the health and long-term integrity of the planet's ecosystems. The International Court of Justice, the Inter-American Court of Human Rights, many countries, and Indigenous governments have recognized this interdependence.[11] According to the Inter-American Court, making "progress towards a paradigm that recognizes rights inherent in the ecosystems is fundamental for the protection of their long-term integrity and functionality."[12] Rights of Nature do not introduce new elements to human rights law but, instead, provide a legal framework for honoring this interdependence with Nature.

2. **Can the rights of whales in the Gulf of California be specified with sufficient precision to be administered?**

Legal systems around the world have already demonstrated the feasibility of recognizing nature and natural entities as subjects of rights. How these laws are applied depends on local contexts

and culture. However, six recurring interests are widely recognized and protected across jurisdictions: (1) environmental and habitat conditions; (2) physical integrity; (3) ecological relations and species-typical behavior; (4) existence and ecological integrity; (5) protection and restoration; and (6) representation and access to justice. Although this report does not examine how each jurisdiction protects these interests in detail, the following examples demonstrate how recognizing whales in the Gulf of California as rights holders may help protect their environmental and habitat conditions and safeguard their physical integrity.

a. Environmental and Habitat Conditions

Nuestro Futuro proposes recognizing the whales' right to communicate, navigate, feed, and reproduce free from underwater noise interference. Whales depend heavily on sound to navigate, communicate and forage, among other things. Maintaining a pollution-free soundscape is necessary to their survival.

Other jurisdictions protect nature from pollution or harmful interference. Tribal Nations in the U.S. and municipalities in Brazil recognize broad rights to a healthy environment and climate systems.[13] The Brazilian municipality of Linhares recognizes the rights of waves to exist with the physical and chemical conditions necessary to maintain ecological balance.[14] Additionally, Panama recognizes sea turtles' right to have free, unimpeded movement in a healthy environment.[15] Environmental and noise pollution, such as shipping-related underwater radiated noise, impair whales' ability to communicate and function within their environments.[16] These protections are essential because they directly protect the environmental and habitat-related conditions necessary for nonhuman living entities to exist, function, flourish, and maintain species-appropriate life processes. Nuestro Futuro's request that the court recognize noise pollution as detrimental to the normal functioning of whales is entirely consistent with the rights to be free from pollution and harmful interference that other jurisdictions have recognized for natural entities.

b. *Physical Integrity*

Relatedly, Nuestro Futuro has asked the court to recognize the whales' right to physical integrity, including the right to be free from ship strikes. Other jurisdictions have adopted laws that protect this right to physical integrity, including a prohibition on killing, capture, cruelty, mistreatment, unnecessary suffering, physical harm, and other abusive human conduct.[17] Many of these cases involve captive animals, but the same principles can protect wild animals.

These rights, while protecting animals from direct bodily harm, also recognize that animals' physical well-being is connected to the health of their ecosystems. Court rulings in Pakistan and Argentina prohibit "abusive human conduct" generally, including unnecessary pain and suffering.[18] In addition to recognizing the right of all sea turtles to free passage in a healthy environment, Panama recognizes the rights of sea turtles to live without pollution from human-caused impacts such as climate change, unregulated tourism, and coastal development.[19] The law also protects turtles from by-catch and other human impacts, even when unintentional. The right to physical integrity then protects nonhumans from unintentional but foreseeable physical harms caused by ordinary commercial activity. Ecuador's *Estrellita* case extends physical integrity to include physiological harm by recognizing a right to be free from disproportionate fear and distress.[20] The right to be free from ship strikes is therefore a consistent application of the right to physical integrity writ large.

3. Can recognition of these rights produce concrete and enforceable obligations?

Nuestro Futuro proposes that the Gulf of California be designated a critical habitat and that regulatory measures be implemented to ensure its protection. The Inter-American Court of Human Rights has already addressed what effective protective measures should look like. Similarly, courts and legislatures in other countries have applied similar protective measures in Rights of Nature cases.

The Inter-American court addressed three legal settings, each giving rise to distinct responsibilities. The first concerns state responsibility in maintaining a healthy environment in the context of climate change. Here, the Court held that states have a responsibility to refrain from causing environmental damage, to adopt positive measures that foster regenerative ecosystems, and to do so with measures that are "compatible with the best available science and [that] recognize the value of traditional, local and indigenous knowledge."[21] Second, the Court outlined specific institutional designs that would help States implement these obligations. These included identifying challenges to ecosystem resilience, expanding protected areas and marine and coastal corridors, cooperating with other states to protect shared ecosystems, and monitoring results.[22] Last, the Court addressed the important role that courts play in providing access to justice and effective remedies for climate-related harms.

Courts and legislatures in several jurisdictions have turned these State responsibilities into enforceable obligations through recognition of the Rights of Nature. Aligned with the principles of Rights of Nature, the Court stated that "the protection of ecosystems should take into account all their components, including human beings, and the relationships that exist between them,"

and that "such decisions should be based on the best available science."[23] Ecuador has used the Rights of Nature provisions enshrined in its constitution to protect the Los Cedros forest's right to function as a regenerative ecosystem by annulling extractive mining permits, ordering the removal of all mining equipment, and issuing non-repetition measures.[24] Similarly, a Brazilian federal court established an advisory body and appointed members of scientific institutions, university laboratories, and academics from various disciplines to identify how to protect the ecological integrity of the Lagoa da Conceição (a lagoon).[25] Aotearoa New Zealand (through the Te Urewera Act) and the Yurok Tribe (through its Klamath River ordinance) have both promulgated laws that set out management plans centered on restoring healthy ecosystems and limiting human interference with their natural cycles.[26] Among other things, these laws and decisions create ways for nonhumans to take part in the legal system through advisory bodies, guardians, and other institutions designed by courts and legislators.

The amicus does not recommend specific protection measures such as zoning changes, restoration works, management planning, or monitoring bodies to enforce these rights. Instead, it advises only that whatever measures are ordered or proposed by the court should be based on the best available science — science that, according to the Inter-American Court, should be up to date, peer-reviewed, transparent about its assumptions, verifiable, and reproducible.

Conclusion

According to the petitioners and scientific literature, whales in the Gulf of California face harm from human activities, particularly underwater noise pollution and vessel strikes. These harms can include, among other things, disruptions to their lives and behavioral patterns, physical injury, reduced survivability, and damage to the ecosystems they depend on.

In support of Nuestro Futuro's petition, the amicus argues (1) that recognition of the Rights of Nature is consistent with and a natural extension of existing law, (2) that legal systems around the world demonstrate the rights of whales can be specified with sufficient precision to be administered, and (3) that recognition of these rights can lead to concrete, enforceable protective measures. Drawing on precedent from the Inter-American Court of Human Rights and examples from other jurisdictions, the amicus shows that measures such as habitat protection, restoration, management planning, and scientific monitoring are already used elsewhere to protect nonhuman rights holders. Recognizing the whales' rights would therefore constitute an application of existing legal principles and practices responsive to the particular needs of marine life in the Gulf of California.

[1] Corte Constitucional del Ecuador, Sentencia No. 1149-19-JP/21, caso Bosque Protector Los Cedros, 10 de noviembre de 2021, párrs. 25–35. Disponible en línea: https://celdf.org/wp-content/uploads/2015/08/Los-Cedros-Decision-Spanish.pdf; Corte Constitucional del Ecuador, Sentencia No. 253-20-JH/22, caso Estrellita, 27 de enero de 2022, párrs. 53–70. Disponible en línea: https://www.animallaw.info/sites/default/files/Estrellita%27s%20case-habeas%20corpus-Ecuador-Spanish.pdf; Unión Internacional para la Conservación de la Naturaleza, World Declaration on the Environmental Rule of Law, 2016, Principio 2. Disponible en línea: https://lpr.adb.org/resource/world-declaration-environmental-rule-law.

[2] As of 18 August 2026, 278 results appear with the "Rights of Nature" and "Approved" filters, further filtered by "Court Case," "Legislation," "Declaration," "Indigenous Declaration," "Indigenous Law," "Policy," and "Constitution." This removes "Civil Society Tribunal," "Civil Society Declaration," "Position Statement," and "Private Sector Governance" from the data set of legal provisions. Using the same filters, but changing "Approved" to "Submitted" provides 59 results, indicating dozens of efforts remain pending. Eco Jurisprudence Monitor, Initiative Index. Disponible en línea: https://ecojurisprudence.org/?post_type=ejm_initiative.

[3] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-32/25, Emergencia climática y derechos humanos, solicitada por la República de Chile y la República de Colombia, 29 de mayo de 2025, párr. 280. Disponible en línea: https://jurisprudencia.corteidh.or.cr/vid/1084981967.

[4] Asamblea General de las Naciones Unidas, Carta Mundial de la Naturaleza, Resolución 37/7, 28 de octubre de 1982. Disponible en línea: http://www.un-documents.net/a37r7.htm.

[5] Corte Internacional de Justicia, Obligations of States in respect of Climate Change, opinión consultiva de 23 de julio de 2025, párr. 294. Disponible en línea: https://www.icj-cij.org/case/187/advisory-opinions.

[6] Convención Marco de las Naciones Unidas sobre el Cambio Climático, en vigor desde el 21 de marzo de 1994, art. 3.3; Convenio de Estocolmo sobre Contaminantes Orgánicos Persistentes, en vigor desde el 17 de mayo de 2004, enmendado en 2009, art. 1; Convenio sobre la Diversidad Biológica, en vigor desde el 29 de diciembre de 1993, preámbulo; Protocolo del Convenio sobre la Prevención de la Contaminación del Mar por Vertimiento de Desechos y Otras Materias, con sus enmiendas de 2006, en vigor desde el 24 de marzo de 2006, preámbulo y art. 3.1; Ley General de Cambio Climático de los Estados Unidos Mexicanos, de 6 de junio de 2012, art. 26, fracción III; Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-23/17, Medio ambiente y derechos humanos, 15 de noviembre de 2017, Serie A No. 23, párrs. 176 y 178; Tribunal Internacional del Derecho del Mar, Sala de Controversias de los Fondos Marinos, opinión consultiva de 1 de febrero de 2011, párrs. 125–135, disponible en línea: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf paras 125-135; Corte Internacional de Justicia, Pulp Mills on the River Uruguay (Argentina v. Uruguay), sentencia de 2010, I.C.J. Reports 2010 (I), p. 71, párr. 164; Corte Suprema de Justicia de Panamá, Pleno, Expediente 910-08, sentencia de 24 de febrero de 2010; Corte Suprema de Chile, Tercera Sala, Rol No. 14.209-2013, sentencia de 2 de junio de 2014, considerando 10.

[7] Unión Internacional para la Conservación de la Naturaleza, World Declaration on the Environmental Rule of Law, Principio 5; Nicholas Bryner, Applying the Principle In Dubio Pro Natura for Enforcement of Environmental Law, en Organización de los Estados Americanos, Departamento de Desarrollo Sostenible, Estado de derecho en materia ambiental: Tendencias en las Américas — Ensayos seleccionados, Primer Congreso Interamericano sobre el Estado de Derecho en Materia Ambiental, Montego Bay, Jamaica, 2015, OEA/Ser.D/XXIII.31, pp. 168–169.

[8] Superior Tribunal de Justiça, Brasil, Segunda Turma, Recurso Especial nº 1.145.083/MG, relator Ministro Herman Benjamin, julgado em 27 de setembro de 2011, DJe de 4 de setembro de 2012. Disponible en línea: https://www.jusbrasil.com.br/jurisprudencia/stj/866045077/inteiro-teor-866045179.

[9] Constitución de la República del Ecuador, arts. 71–74 y 395, numeral 4; Nicholas Bryner, Applying the Principle In Dubio Pro Natura for Enforcement of Environmental Law, p. 171.

[10] Suprema Corte de Justicia de la Nación, México, Amparo en Revisión 307/2016, sentencia de 14 de noviembre de 2018, párrs. 96, 102, 104, 107, 242. Disponible en línea: https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-01/AR%20307-2016.pdf.

[11] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-32/25, párr. 234, 277, 377; Corte Internacional de Justicia, Obligations of States in respect of Climate Change, párrs. 373, 375, 389, 393.; Asamblea Legislativa Plurinacional del Estado Plurinacional de Bolivia, Ley N.° 071 de 2010, Ley de Derechos de la Madre Tierra, art. 7.I, inciso 3. Disponible en línea: https://ecojurisprudence.org/wp-content/uploads/2022/02/Bolivia_Law-of-the-Rights-of-Mother-Earth_43.pdf; Corte Constitucional del Ecuador, Sentencia No. 2167-21-EP/22, caso Río Monjas, 19 de enero de 2022, párrs. 119 y 132–134. Disponible en línea: https://ecojurisprudence.org/wp-content/uploads/2023/02/upload1165.pdf; Corte Constitucional del Ecuador, Sentencia No. 1185-20-JP/21, caso El río Aquepi, 15 de diciembre de 2021, párrs. 44–57. Disponible en línea: https://ecojurisprudence.org/wp-content/uploads/2022/02/Ecuador_Aquepi-river-case_433.pdf; White Earth Band of Chippewa Indians, White Earth Reservation Business Committee Resolution No. 001-19-009, Rights of Manoomin, 2018, pp. 1, 6-8. Disponible en línea: https://ecojurisprudence.org/wp-content/uploads/2022/02/2018WhiteEarthRightsofManoominResolutionandOrdinance.pdf.

[12] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-32/25, párr. 279.

[13] White Earth Reservation Business Committee Resolution No. 001-19-009, Rights of Manoomin, sec. 1(a); Yurok Tribal Code ch. 21.60, Rights of the Heyhl-keek 'We-roy Ordinance, § 21.60.100(a)(1)–(3); Câmara Municipal do Paudalho, Emenda à Lei Orgânica n.º 03 de 2018, art. 181.

[14] Câmara Municipal de Linhares, Lei n.º 4.225/2024 (Direitos das Ondas), art. 2.

[15] Ley 371 de 2023 de Panamá (tortugas marinas), art. 29.

[16] Diamant R, Gruber D, Gero S, Begus G. 2026. Evidence for the influence of shipping underwater radiated noise on sperm whale coda structure. Ecological Informatics. https://doi.org/10.1016/j.ecoinf.2026.103881.

[17] Ley 371 de 2023 de Panamá (tortugas marinas), art. 31.; Tercer Juzgado de Garantías de Mendoza, Expte. P-72.254/15 (Cecilia), pp. 37 y 44; Poder Judicial de la CABA, Expte. A2174-2015/0 (Sandra), Considerando V (p. 11 del PDF); Islamabad High Court, Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad, W.P. No. 1155/2019, pp. 59-60.

[18] Tercer Juzgado de Garantías de Mendoza, Expte. P-72.254/15 (Cecilia), pp. 37 y 44; Poder Judicial de la CABA, Expte. A2174-2015/0 (Sandra), Considerando V (p. 11 del PDF); Islamabad High Court, Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad, W.P. No. 1155/2019, pp. 59-60.

[19] Ley 371 de 2023 de Panamá (tortugas marinas), art. 29.

[20] Corte Constitucional del Ecuador, Sentencia No. 253-20-JH/22 (Estrellita), párr. 137.

[21] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-32/25, párrs. 269, 283.

[22] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-32/25, párr. 366.

[23] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-32/25, párr. 367.

[24] Corte Constitucional del Ecuador, Sentencia No. 1149-19-JP/21 (Los Cedros), párrs. 344–345.

[25] 6.ª Vara Federal de Florianópolis, decisão sobre a Lagoa da Conceição, 2021, p. 4.

[26] Te Urewera Act 2014, ss 44-46, 130; Yurok Tribal Code ch. 21.60, Rights of the Heyhl-keek 'We-roy Ordinance, § 21.60.120(a)(2).