

YACHATS ACADEMY OF

arts &
SCIENCES

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SHOULD TREES HAVE STANDING?

Ethics, the Environment and the UN Declaration
on the Rights of Indigenous Peoples

SATURDAY MAY 17, 6:30 PM

Yachats Commons
4th St. & Hwy. 101

Suggested Donation: \$5.00

*A moral/ethical reflection
on whether trees, water,
soils, ecosystems or oceans
have moral status and can
make justifiable claims on
human duty.*

YACHATS ACADEMY OF ARTS AND SCIENCES

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Supported by the Friends of the Yachats Commons Foundation

Should Trees Have Standing?

**Should Nature have Rights?
or Not?**

First court case, 2012, NZ

In 2012, in one of New Zealand's longest running court cases, an agreement between the Crown and the indigenous iwi (Maori) declared that the Whanganui River system will henceforth be recognized as an integrated, living whole, as a person before the law, and will have its own legal identity and voice. Two guardians, one from the Crown and one from a Whanganui River iwi, will be given the role of speaking for and protecting the river.

(. . .



ECOSYSTEMS AND HUMAN WELL-BEING

Synthesis



MILLENNIUM ECOSYSTEM ASSESSMENT

Ecosystem Services

“Any positive benefits that ecosystems provide to humans, direct or indirect, small or large.”

-- *The Millennium Ecosystem Assessment*, a UN sponsored analysis of the impact of human actions on ecosystems and human well-being. 2005

Ecosystem Services, 4 kinds

- 1. Provisioning** (what we extract: foods, water, plants for clothing, medicines, "natural resources"), etc
- 2. Regulating** (pollination, decomposition & recycling, water purification, carbon storage, climate regulation, etc
- 3. Supporting** (photosynthesis, nutrient cycling, the water cycle, soil creation, etc)
- 4. Cultural**, non-material (beauty, healing, recreation, spiritual connection, creativity, etc)

MEA's four findings

- 1.** In the past 50 years, humans have changed ecosystems more rapidly and extensively than in any comparable period in human history.
- 2.** Unless addressed, ecosystem services for future generations will be much diminished
- 3.** It could grow significantly worse during the first half of this century.
- 4.** Reversing the degradation, while possible, would involve changes in policies, institutions, and practices that are not currently under way.

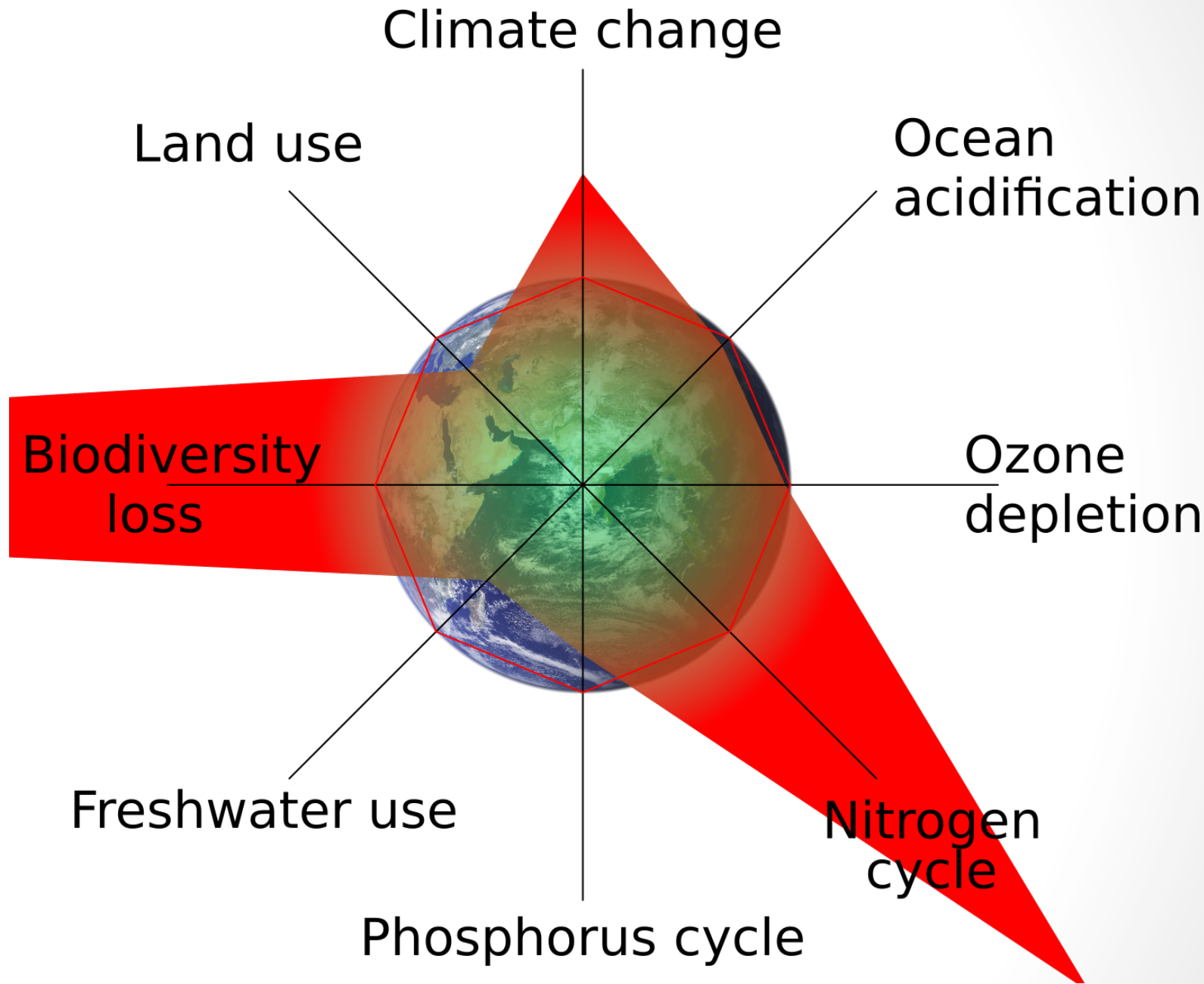
Planetary boundary definition

“To avoid catastrophic environmental change humanity must stay within defined 'planetary boundaries' for a range of essential Earth-system processes.... If one boundary is transgressed, then safe levels for other processes could also be under serious risk.”

Nature (9-23-09)

Planetary boundaries

1. Ozone depletion
2. Biodiversity loss
3. Chemicals dispersion
4. Climate Change
5. Ocean acidification
6. Global hydrological cycle changes
7. Land use changes
8. Nitrogen & phosphorus cycles
9. Atmospheric aerosol loading



Climate Change Reports 2014

- AAAS, *What We Know* March
- IPCC (two reports) March
- *National Climate Assessment* May
- Center for Naval Analyses Military Advisory Board, *National Security and the Threat of Climate Change* May
 - "serious threat," "threat multiplier," "even in stable regions," etc.
- Colbert Report (damning) May

...)

Rights approaches to saving earth

1. Human rights
- 2. Legal standing for nature**
3. Public trust doctrine, protecting rights of beneficiaries (Mary Wood, *Nature's Trust*)
4. Community rights and "natural community" rights, via local ordinances (CELDF)
5. "Ecocide" as a 5th crime against peace (Polly Higgins)

UN Declaration on the Rights of Indigenous Peoples - 1

Inclusion of a *community's* rights

Article 1

Indigenous peoples have the right to the full enjoyment, *as a collective or as individuals*, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

UN Declaration on the Rights of Indigenous Peoples - 2

Recognizes respect for the earth.

Article 26

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use....

UN Declaration on the Rights of Indigenous Peoples - 3

Recognizes respect for the earth.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Public Trust Doctrine

- What a trust is (trust, trustee, beneficiary)
- Trust will benefit the beneficiary
- Trustee must act in **sole** interest of the trust and beneficiary
- The environment is the trust, govts are the trustees, future people are the beneficiaries.

Should nature have rights?

- Do trees, water, soils, species, ecosystems or oceans have *intrinsic* moral value?
- Do they have interests?
- In **moral** terms: can they make justifiable claims on human moral duty?
- In **legal** terms: should they have standing as persons in courts of law?

What Rights for nature?

- to exist
- to flourish
- to regenerate
- to evolve
- to a healthy habitat
- to be free from harmful contamination, or destructive genetic manipulation.

Definitions

- "Nature:" the entire natural world -- oceans, forests, ecosystems, mountains, bodies of water, drainages, etc -- minus humans.
- "Value:" two kinds: utility and *in se*.
- "Standing:" it has interests, can be heard in a court, should be protected for its own worth
- Right: ...

Definition of “Right”

- A “justified moral claim”
- A moral minimum, an ethical & legal floor
- Rights trump other policy justifications
- “As civil laws represent hard legal boundaries outside of which certain behaviors are not legally permissible, rights represent hard ethical boundaries outside of which certain behaviors are not morally permissible.”

Questions we are not asking

- Is nature valuable to us?
- Should non-human nature be protected?
- Animal rights (factory farming, animal cruelty)

Arguments Con R.O.N.

- We are humans so we designate Rights for humans, which is natural.
- Once we open that RON door, where does it stop? Rights for rocks? Sugar ants?
- Will lawns have a right to not be mowed, weeds a right to not be pulled, rats a right to not be trapped, ants a right to not be invited into vacuum cleaners, and rivers a right to not be dammed or siphoned off as water for breweries?

Arguments Pro R.O.N.

- Broadening of "social instincts and sympathies" (Darwin)
- Compassion, fellow feeling, connection (Buddhism, Schopenhauer, etc)
- Supreme Court Justice William O. Douglas, in a 1971 dissenting opinion in *Sierra Club v Morton*, "...concern for protecting nature's ecological equilibrium **should lead to the conferral of standing upon environmental objects** to sue for their own preservation."

Versifier Against...

“If Justice Douglas has his way—
O come not that dreadful day—
We’ll be sued by lakes and hills
Seeking a redress of ills.

Great mountain peaks of name prestigious
Will suddenly become litigious.

Our brooks will babble in the courts,
Seeking damages for torts.

How can I rest beneath a tree
If it may soon be suing me?

Versifier Against...

“Or enjoy the playful porpoise
While it’s seeking habeas corpus?
Every beast within his paws
Will clutch an order to show cause.
The courts, besieged on every hand,
Will crowd with suits by chunks of land.
Ah! But vengeance will be sweet
Since this must be a two-way street.
I’ll promptly sue my neighbor’s tree
for shedding all its leaves on me.”

- John M. Naff, Jr., “Reflections on the Dissent of Douglas, J.,
in *Sierra Club v. Morton*,” 58 ABAJ 820 (1972).

Mich Appeals Court 1983

We thought that we would never see

A suit to compensate a tree.

A suit whose claim in tort is prest

Upon a mangled tree's behest;

A tree whose battered trunk was prest

Against a Chevy's crumpled chest;

A tree that may forever bear

A lasting need for tender care.

Flora lovers though we three

We must uphold the court's decree.

-1983 suit by a tree owner to recover from a negligent driver
for injuries to the tree (entire decision)

Ecuador Constitution (2008)

CHAPTER SEVEN

Rights of nature:

Article 71. “Nature, or Pachamama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”

Ecuador case (2011)

“...the Provincial Court ruled in favor of Nature in respect of the Vilcabamba river.... The court stated that in cases where rights of nature conflicted with other constitutional rights... the rights of nature would prevail because a 'healthy' environment is more important than any other right and affects more people.”

- Adelman, Sam, "Rio+20: sustainable injustice in a time of crises," *JHRE*, vol 4 no 1, March 2013), pp 27-28.

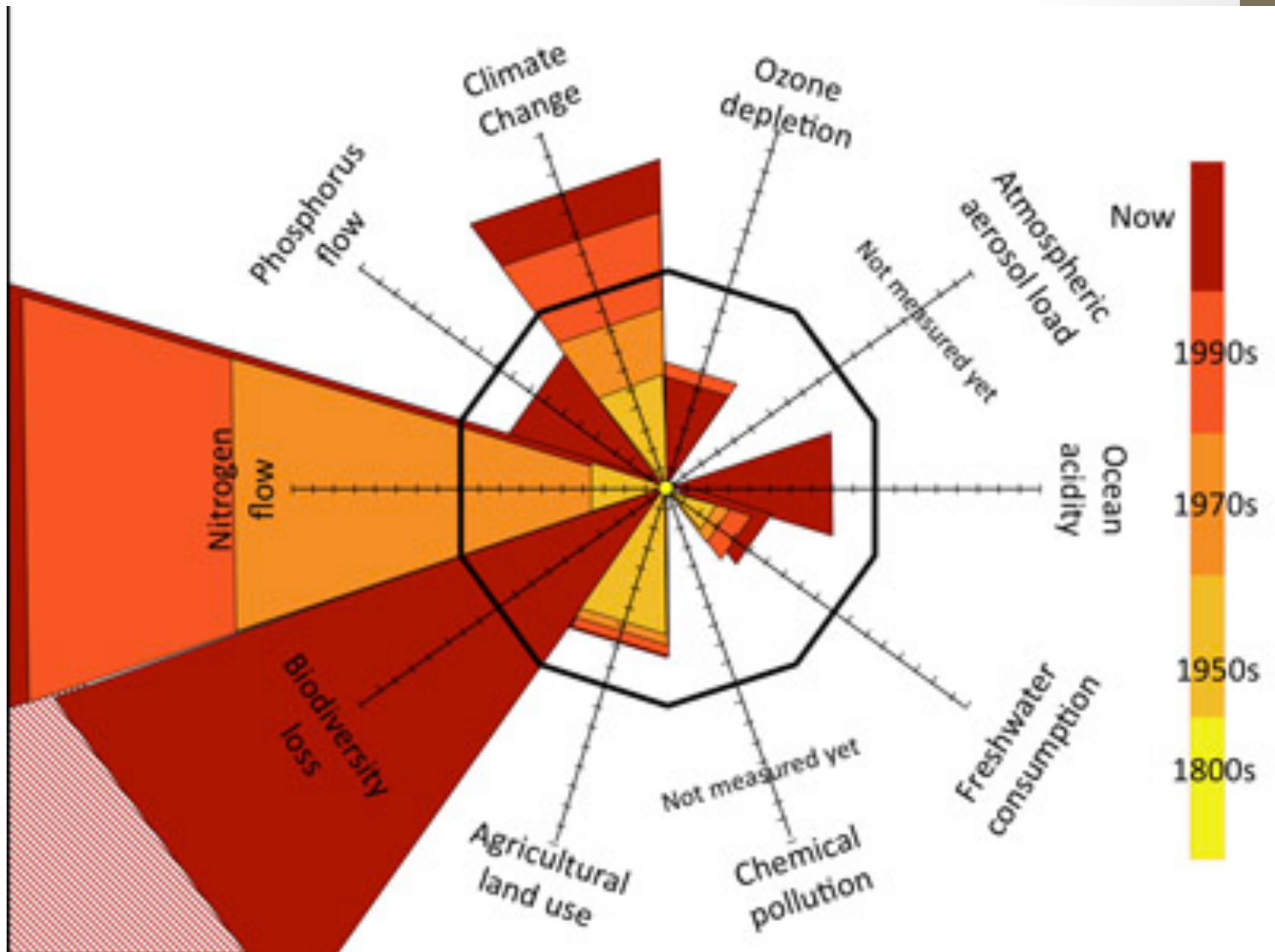
3 Questions for you

1. Should we consider nature to have any *in se* moral claim on human duty? Why or why not?
2. Should nature have any rights in courts of law (legal standing)? Why or why not?
3. If so, what is the *unit of nature* that should hold these rights? Individual organisms? Species (ESA)? River systems? Ecosystems? Oceans? Parts of oceans?

Groups

- **4-5 people**
- **Responses to 3 questions**
- **Who will report**





Local Food System Ordinance, Lane County

“Natural communities, such as soils and other terrestrial systems and aquatic systems such as aquifers, streams, rivers, and wetlands, shall possess the right to exist, persist, maintain themselves and regenerate their own vital cycles, structures, functions and evolutionary processes.”

Two kinds of value

- *In se*, essential (good in itself)
- Utility, a resource, instrumental (useful, good for...)
- Both

Human persons are said to have *in se* value, and can therefore be rights holders.

We are asking if nature has *in se* value.

Ecosystem Services

Provisioning

Products from ecosystems

- Food
- Fresh water
- Fuelwood
- Fiber
- Biochemicals
- Genetic resources

Regulating

Benefits from regulation of ecosystem processes

- Climate regulation
- Disease regulation
- Water regulation
- Water purification

Cultural

Nonmaterial benefits from ecosystems

- Spiritual & religious
- Recreation & ecotourism
- Aesthetic
- Inspirational
- Educational
- Sense of place
- Cultural heritage

Supporting

Services necessary for production of all other services

- Soil formation
- Nutrient cycling
- Primary production

Our Question:

Is this a good idea or not?

- Does nature have value *in itself*, beyond its utility value to us?
- Does nature have interests?
- Should nature have standing and be considered a person before the law?