



Indigenous Transnational Environmental Justice: The Case of Aotearoa

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Abstract

The recent signing of He Whakaputanga Moana (2024; The Declaration for the Ocean) marks a watershed moment in cetacean protectionism and Indigenous rights across the Pacific. This treaty provides cetaceans, including sperm whales and Hector's dolphins, legal personhood and creates new ways to safeguard these culturally important animals. It represents one of the first examples of contemporary Indigenous transnational autonomy across the Pacific, and demonstrates that many communities are reinstating control of their traditional lands and waters. This article reimagines contemporary environmental policy through the treaty, specifically focusing on Aotearoa's Māori communities, and critically examines its wider impacts. The discussion highlights He Whakaputanga Moana's key role in fostering species justice, despite significant challenges enforcing the treaty and protecting marine mammals. Moreover, the authors argue this agreement represents a burgeoning and crucial space for Indigenous governance in the region, and promotes innovative environmental responses that focus on cultural relativism.

Keywords: Indigenous governance; species justice; animal rights; Southern green criminology; cetaceans.

Introduction

In July 2023, it was reported that two Hector's dolphins (*Cephalorhynchus hectori*) were killed off the coast of Aotearoa (the Māori name for New Zealand) as a result of bycatch over a two-month period, leading to calls for tighter legislation to protect the species (Neilson, 2023). An endangered species with declining population numbers, Hector's dolphins make up just one part of a wider marine mammal decline, with a report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) finding that approximately 33% of cetacean species were threatened with extinction (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services [IPBES], 2019). These dolphins, alongside other cetaceans, are important cultural symbols for Māori and other Pacific Island communities (see Cressey, 1998). While they and other marine mammals were traditionally hunted (see Lythberg & Ngata, 2019), they connect modern day Indigenous peoples to their ancestors and culture. Despite this importance, many cetaceans that migrate across the Pacific are under threat due to environmental change and human activity. Under the *IUCN Red List of Threatened Species* (the Red List), many Pacific cetaceans are currently considered at risk of extinction, with numbers continuing to decline despite conservation measures such as bans on whaling. This situation creates challenges for Indigenous groups, communities, and Pacific Island states that rely upon the cetaceans as a cultural object and as the basis for their tourist economy. Moreover, the continuing deaths of cetaceans in Pacific waters highlight that current approaches designed by Northern metropolises and settler governments are not effective.

Recognising these failures, Indigenous leaders of Tahiti, Hawaii, Tonga, Aotearoa, The Cook Islands, and Easter Island signed He Whakaputanga Moana (2024) on the 28th of March 2024. It was further ratified by Māori Kiingi Tuheitia,¹ the Kaumaiti



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Nui of the Cook Islands, and 15 paramount chiefs of Tahiti and the Cook Islands. Going against global norms, and while the full wording of the treaty has not been released, He Whakaputanga Moana recognises cetaceans as legal persons who have inherent rights. These include freedom of movement, right to a healthy environment, right to life, and the legal protection to thrive alongside humanity. Indigenous communities lack the power to compel colonial settler governments to ratify the treaty's content. However, this signing will enable communities to challenge current legal frameworks and open a dialogue with the relevant Polynesian and regional authorities to improve the protection of cetaceans. This, in turn, has the potential to result in the implementation of further enforcement power to help protect other species within the Pacific Island waters.

Legal personhood has become a novel way to promote species justice and create greater protections for important cultural artefacts, symbols, animals, and spaces. This treaty adds to the growing trend of Indigenous groups promoting, and legislating, their beliefs. However, such an approach has significant challenges and is arguably a method to publicise the protection of cetaceans without promoting meaningful change. Below, we argue the signing of He Whakaputanga Moana is a watershed moment when analysed through a species justice, green criminological, and Southern criminological lens. Cetaceans are a significant cultural symbol to the diverse Indigenous peoples of the Pacific, who have political weight on islands such as Tonga. By signing and promoting the treaty, these traditional leaders can create tacit pressure on governmental organisations and regional neighbours to codify cetacean personhood. Doing so creates a safer network of green spaces for cetaceans in and around the Pacific, particularly for those species on the Red List. Finally, the signing of He Whakaputanga Moana represents burgeoning pan-Pacific Indigenous governance and highlights that Indigenous leaders, actors, and community are reasserting their power in their communities, countries, and on a wider global scale.

What are Cetaceans?

Cetaceans belong to the Cetacea infraorder, which comprises an array of water-based mammals including dolphins, whales, and porpoises. The Pacific hosts a diverse range of cetacean species, both resident and migratory populations, with an array of conservation statuses. These include sperm whales, which are classified as vulnerable, and endangered species, including Hector's dolphins and blue whales (Cooke, 2018/2019; Reeves et al., 2013; Taylor et al., 2008/2019). Residing in both the deeper oceanic and coastal parts of the region, cetaceans play key roles in local ecosystems (see Gilbert et al., 2023). Unfortunately, reflecting wider global trends in species decline, cetaceans have faced an array of human threats which have reduced their numbers considerably within the Anthropocene (Nicol et al., 2020; WWF, 2024). Moreover, migratory cetaceans across the Pacific have unique conservation challenges as they are found circumglobally and pass through numerous countries' jurisdictions (see Boyd, 2004).

Alongside these migratory challenges, Pacific cetaceans face other threats that increase their risk of decline and extinction, with noise pollution, fishing practices, and deep-sea mining having a detrimental impact on the marine mammals' wellbeing (Brownell et al., 2019; Johnston & Painter, 2024; Thompson et al., 2023). This trend in threats has changed in recent decades as, historically, commercial whaling was linked to large population declines in marine mammals and, although whaling still takes place in some regions, it has been banned since 1986 (Environmental Investigation agencies, 2020; International Whaling Commission (IWC), 2025). Contemporarily, environmental concerns such as climate change have been found to have an impact on cetacean species. For example, van Weelden et al. (2021) found that migratory patterns, habitats, and wider species distribution have all been impacted by sea surface temperatures and reduced sea ice, increasing the risk of extinction for some species. Additionally, decline in cetaceans is often a multifaceted issue, with distinct species being vulnerable to different threats and no sole issue being responsible for their decline. For example, whilst some smaller cetacean species are more likely to be victims of overfishing, larger mammals such as the blue whale (*Balaenoptera musculus*) are not as vulnerable to this due to their size and are more likely to be harmed by ship collisions (Jefferson et al., 2015; Redfern et al., 2017; Temple et al., 2024). Additionally, different regions will present different threats to species, such as heightened risk of ship collisions in areas of heavy marine traffic (Grossi et al., 2021), creating greater risk for migratory cetaceans. These contemporary threats have resulted in a continued push for further protections, research, and awareness in an effort to help conserve the species.

Whilst a vulnerable infraorder, many species such as whales in particular have arguably received more attention and protections over the years than other wildlife, in part due to their charismatic megafauna nature (Mazzoldi et al., 2019). White and Heckenburg (2014) discussed how public perceptions of animals play a role in the level of protection they receive. They observed that smaller and less "charismatic" species, such as insects and reptiles, garner less public attention than megafauna and, as a result, receive less protection (see Wyatt, 2013; see also Flynn & Hall, 2017, for a discussion of this in relation to the non-human ideal victim). Many large cetacean species have fallen into this bracket, with environmental public awareness campaigns commonly focusing on marine mammals, alongside wider fictional media (see Albert et al., 2018; Mazzoldi et al., 2019). As such, it is clear human perceptions of cetacean species have played a role in their protection.

The Pacific Islands and Cetaceans

As noted by Matsuda (2006), defining the Pacific is a challenging task. The region contains a vast array of islands, countries, and cultures; for each of these, the term “Pacific” can have diverse meanings. Geographically, the region is made up of many nations with a total estimated population of around 10 million people. The islands vary in population size and density, ranging from Fiji, one of the largest countries with a population of over 900,000, to countries such as Nauru, with an estimated population of approximately 12,000 people (Ramirez, 2021; World Bank, 2025). These island nations are made up of numerous groups of Indigenous peoples, who are the predominant population group in most Pacific Island countries (United Nations Department of Public Information, 2015). Colonisation and its legacy have made these countries increasingly diverse, with large Indian communities, the heritage of indenture in the Pacific (see Lal, 1998), alongside expatriates and workers from Europe, Asia, and larger regional neighbours such as Australia. The two historic ethnic groups in the region are Melanesians, who have traditional ownership of lands stretching from New Guinea to Fiji, and Polynesians, who migrated across the Pacific via boats and claim traditional ownership of lands including Hawaii, Tonga, and Aotearoa.²

Polynesian cultures have a historied connection to cetaceans. Cetaceans’ migratory patterns provided unique information to navigators as they discovered new islands across the Pacific (Cawthorn, 2000; see also Stevens & Wanhalla, 2019), and the whale has a central role in many Polynesian cultures (see Cressey, 1998). For example, some Pacific Island communities share the story of Paikea, a whale rider who transformed into or rode a whale, shared kinship with whales, and could call on them to rescue stranded navigators (Cawthorn, 2000; Lythberg & Ngata, 2022; see also Stevens & Wanhalla, 2019). Focusing on Māori beliefs, many iwi (Māori communities) trace their lineage back to Paikea, and whales are considered children of the ocean god Tangaroa (Stevens & Wanhalla, 2019). However, this veneration does not mean that iwi did not hunt whales. As noted by Cawthorn (2000), cetaceans were “revered relations in the tribal area, but despite this, they are a resource to be used” (p. 3), and communities would force individuals or pods to beach (Lythberg & Ngata, 2019). They would also harvest naturally beached whales (Cawthorn, 2000; Lythberg & Ngata, 2019), although with reverence as these were seen as gifts from Tangaroa. These practices contrast with whaling post colonisation, which resulted in the industrialised exploitation of many cetacean species and rapid decline not observed within Indigenous hunting (see Jackson et al., 2016).

Looking to other Pacific Island Polynesian cultures, whales, Hector’s dolphins, and other cetaceans are embedded within the mythology of various societies and their rituals (see Cressey, 1998). Cetacean bones also formed an intrinsic part of the trans-Pacific pre-settler economy as one of many currencies in the region (see Akimichi, 2010). Tongan communities were well known for hunting whales, various parts of which were then traded across the wider South Pacific (see Gosden & Marshall, 1999). This trade included *tabua*, a sperm whale tooth, which holds significant cultural value in Fijian iTaukei communities and Māori iwi (see Luker, 2019; see also Marshall, 2020). The commercialisation of cetaceans has continued into contemporary times, although in a different format. For example, many communities across the Pacific, including the Vava’u islands in Tonga, are heavily reliant on income generated by whale tourism (see Orams, 2013).

Southern Green Criminology: Blending Perspectives

Although several of the threats to cetaceans fall under countries’ criminal law, both globally and within the Pacific Islands, many risks and threats to these species’ survival are not criminalised. Global criminal justice is constructed through a lens of anthropocentric exclusion, with harms impacting humans more likely to be criminalised in comparison to the victimisation of nature (Lynch & Stretesky, 2014). Historically, criminology has taken a similarly anthropocentric approach, predominantly focusing on human victims and harms (Nurse & Wyatt, 2020). Addressing this limitation of orthodox criminology, green criminology provides a more encompassing environmental focus. It explores harms against non-human animals and the biosphere, regardless of the legality of the harm (White, 2011), and includes civil offences against non-humans where perpetrators are fined or given a warning without criminal sanction. Additionally, as with other areas of critical criminology, green criminology promotes a future-conscious perspective on the biosphere, including a recognition of the later impacts human action or neglect will cause (Hall, 2015). This is pertinent given the nature of crimes against the environment, as there are significant inconsistencies surrounding the nexus of criminal or regulatory offences and both environmental corporate and wildlife crimes (Nurse, 2022; Nurse & Wyatt, 2020). As such, green criminology has a crucial role in better understanding threats to cetaceans and provides a novel lens to critically explore the threats and protections for all marine mammals.

A key theme amongst current protections of non-human animals is perceived ownership. Beirne (1998) and Hall (2015) both highlighted that animal protection is often framed through a lens of human property and/or a resource, instead of innate protections due to their existence. As such, current protections are often only in place to protect human interests and are grounded in speciesism (see García Ruiz et al., 2020). “Speciesism” refers to the idea that human beings, in this case, have

significant prejudice and bias towards other species, perceive themselves as more significant, and favour their anthropocentric interests (see Beirne, 1998). White (2008) explored how responses within green criminological categories of current protections generally fall into one of three frameworks: environmental justice, ecological justice, or species justice. Environmental justice examines responses where humans are perceived as victims of environmental harms, which represents most contemporary responses and takes an anthropocentric perspective. Property status exemplifies this framework, as species protections are an extension of human needs and are often linked to their perceived use (Nurse & Wyatt, 2020). As such, the interests and welfare of these species are not often considered under this perspective. Ecological justice observes human beings as being one part of the wider environment, explores harms and crimes against the environment, and views the biosphere as a victim (White, 2013). Finally, species justice is centred on the personhood and rights of individual species and explores the victimology of non-human animals (see Sollund, 2022).

Whilst human rights often form the basis for many countries' criminal legislation there is no universal standard of animal rights to act in a similar fashion. There have been attempts to create a global standard for animal rights, with the wider aim of standardising global animal protections. However, the 1975 and 2011 United Nations declarations of animal rights both failed due to debates surrounding what these rights could be and which species would be protected (see Nurse & Wyatt, 2020). A novel method to address these failings has been a recognition of personhood for the environment and individual species. Although ideas of personhood have been historically discussed in Indigenous settings, legal environmental personhood was first discussed by Stone (1972) in his seminal work, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, Stone (1972) highlighted that by considering the rights of the environment, new and improved protections can be envisaged, with the space to create innovative tools to stop environmental destruction. One of the central arguments for environmental personhood is how to achieve rights for non-human animals. Corporations and states, although not sentient beings, have some form of legal personhood through their creation and government, or constitutional, action (Stone, 1972). Stone (1972) argued that as actors such as rivers or trees could not represent themselves, their guardianship and interests could be represented by other parties in legal proceedings. Based upon this principle, numerous guardianship cases representing animals have taken place, including the representation of apes and their wellbeing, and a 2021 Ohio court deposition on the interests of Colombian hippo populations (see Nurse & Wyatt, 2020 Doornbos, 2023). Much like these previous cases, the analysis presented below highlights that any exploration of cetacean personhood would involve a wider process of guardianship and individuals representing these animals.

In addition to this green criminological perspective, this article also explores He Whakaputanga Moana through a Southern criminological lens. Southern criminology highlights that the vast oeuvre of criminological theory and knowledge is dominated by Northern thought and argument (see Carrington et al., 2018). This exclusion of Southern voices limits a wider understanding of crime and justice in the Global South and has marginalised Indigenous and previously colonised peoples' lived experiences. Much like the anthropocentric focus of justice systems noted above, settler governments and criminal justice institutions have been historically hostile towards Indigenous groups. Acts such as genocide, forced relocation, over-policing and incarceration, and the destruction of culture have had significant impacts on Indigenous peoples and knowledge.

While such a perspective is relatively novel to Western scholars, other such as Moosavi (2020) and Ciocchini and Greener (2021) highlighted that we routinely failed to view colonisation outside of its historical context (Blagg & Anthony, 2019). As a result, Southern criminology fails to encompass new modalities of neo-colonialism and structures of oppression (Ciocchini & Greener, 2021). Such an approach can also create a dangerous narrative that Indigenous knowledge and practices are flawless (Ciocchini & Greener, 2021), orientalisng these groups and limiting a full critical discussion of challenges in these communities (e.g., patriarchy). It further groups Indigenous thought at a macro level, universalising the experience of Indigeneity in communities and assuming consensus amongst individuals, communities, and nations. This approach fails to account for the innate complexity that each Indigenous individual experiences, and that assumption of consensus is in itself orientalisng. As a result, Southern criminological scholars should be cautious when viewing a topic through this lens. Nonetheless, and despite such limitations, Goyes (2023) noted that Southern criminology highlights ecological victimisation and discrimination within the Global South, and that the structures and justifications for this are facilitated by the Northern metropolises (Goyes et al., 2021). This operates alongside global environmental policies, again dictated by the Global North, to further marginalise Indigenous voices, and promote Western issues and interests through economic and political coercion.

Complex and successful species and environmental management solutions have been used by traditional owners of the land for thousands of years, which has only recently been acknowledged by contemporary settler governments. For example, bushfire prevention in Australia calls upon the customary knowledge of various Aboriginal communities (see Fletcher et al., 2021). Marine conservation in the same country has similarly been dominated by Indigenous voices, with dedicated areas that create a space for Aboriginal and Torres Strait Islanders to develop sustainable environmental reserves for animals such as dugongs (see Smyth & Isherwood, 2016). However, such programs in both Australia and Aotearoa are often not exclusively run by

Aboriginal, Torres Strait Islander, or Māori actors (see Taiepa et al., 1997 see also National Indigenous Australian Agency, n.d., for an overview of funding provided to Indigenous Protected Areas). Instead, respective settler governments provide oversight of these programs. Such efforts are also duplicitous, as the wider aim of such projects is economic development in the area. From a Southern criminological perspective, these actions denigrate autonomy in Indigenous communities; prevent respectful research on culturally significant symbols, animals, and objects; and project notions of development that represent Western mindsets, not Indigenous community needs (see Escobar, 2011). The signing of He Whakaputanga Moana excludes settler governments from environmental protection, promotes the cultural significance of cetaceans, and highlights Indigenous solutions to environmental and development challenges.

He Whakaputanga Moana

Māori traditional leaders, alongside their wider community, have consistently attempted to reform Aotearoa law to maintain the environment (see Magallanes, 2015). The unreleased He Whakaputanga Moana was conceived as a part of the Hinemoana Halo Ocean Initiative, or “cloak of protection for the ocean” (Burson et al., 2024, p. 36) and was designed to support Indigenous guardianship of Pacific environments. It further creates avenues for investment into various environmental initiatives, such as the philanthropic Te Manahuna Aoraki Project, designed to rehabilitate the upper Mackenzie Basin and Aoraki national park alongside protecting endangered species in the area (Muller et al., 2024). Such investments create a snowball effect and promote pathways for wider community support by Western scientists and economists (Conservation International, n.d.). Initiatives such as this are vital in recognising Māori custodianship in Aotearoa and re-legitimising the political and economic status of Indigenous communities and leaders.

As noted above, He Whakaputanga Moana does not set a precedent in terms of granting legal personhood as a form of environmental protection in Aotearoa. Māori leaders and communities were instrumental to the Whanganui River being granted legal personhood in 2017, a move that was supported by the white settler government (Rowe, 2018). The extent of legal personhood for culturally significant spaces or species has never been tested in Pacific Island or international courts. Instead, as noted above, cases are typically relegated to a single animal or species. Other efforts have typically focused on victimisation through entertainment or harm caused by zoos and circuses. These have included India’s push to grant cetaceans’ personhood (see Bertoni & Beisel, 2013) and the case before the Colorado Supreme Court where non-government organisations (NGOs) are suing on behalf of elephants for their freedom (see Slevin, 2024).

The significant scope of He Whakaputanga Moana, and cetacean personhood, creates challenges for the treaty. For example, as the treaty does not speak directly to a specific animal or type of victimisation, there is space for cetacean abuse not encompassed by it or general criminal law (e.g., ship strikes). This limitation is further exacerbated as animals in the cetacean food chain are not protected by the treaty, still placing them at risk of environmental harm. Moreover, given the aforementioned migratory nature of these species alongside the lack of universal animal rights and fewer protections in regions they transit, there are still significant global risks to cetaceans. Alongside enforcement critiques, concerns have been raised regarding the potential ineffectiveness of personhood as a legal tool. It has been argued that human rights do not fully protect human beings, necessitating an increased focus on wider behavioural and educational strategies (see Evans, 2024).

Effective implementation of a legal personhood environmental protection strategy has varied across global contexts. For example, Kahui et al. (2024) found that in other cases of environmental personhood poorly defined liability of the guardians and economic complexities led to two cases of granted personhood being overturned. It should also be noted that, although in principle a positive development, incorporating rights and personhood takes time, which declining species may not have. Children’s rights, although today enshrined and protected in most parts of the world, previously had no legal weight. This has changed over the last century but demonstrates that legal and institutional changes take time (Stone, 1972). A further concern is that species such as Hector’s dolphins appear to reach sexual maturity between the ages of 6 and 9 years (Slooten, 1991), so positive population recovery may also take time. Even if ratified, He Whakaputanga Moana is unlikely to have an immediate effect on many cetaceans. There are also questions surrounding the treaty’s utility in the everyday lived experiences of Indigenous peoples and communities, and whether He Whakaputanga Moana would simply be ignored by local actors. However, such concerns are often framed by racist ideals that Indigenous peoples are more deviant. Instead, and drawing upon Australian examples of dugong hunting, there is often no evidence that Indigenous communities engage in wildlife crimes (Terzon, 2017). Moreover, as the treaty is given authority by non-Western leaders, this may be more effective in protecting cetaceans from local Indigenous hunters, who are more likely to respect these voices.

Nonetheless, Aotearoa has consistently been at the forefront of cetacean protection, rigidly following the International Convention for the Regulation of Whaling (1946; ICRW). Should the settler government choose to ratify the treaty or suits from whale advocates be upheld in Aotearoa courts, South Pacific cetaceans could be protected beyond the narrow scope of

“great whales” codified by the ICRW (1946). Moreover, as Aotearoa’s settler government has been an advocate for the Southern Ocean Whale Sanctuary and critical of Japan’s whaling programs (see New Zealand Foreign Affairs and Trade, n.d.), there is the possibility that the treaty could be ratified and enforced by at least one major power in the region.

The Value of He Whakaputanga Moana

Transnational Indigenous Governance

Since colonisation, transnational Pacific governance has largely been left to the settler governments. Smaller countries such as Fiji have robust Indigenous representation in their parliaments (Norton & Varani, 2024). However, wider regional policy and practice is driven by the major Western powers in the area: Australia; Aotearoa’s settler government; and, to a certain extent, America. Pacific governance therefore lacks an Indigenous focus and marginalises the historic relationships between the traditional custodians of these islands. He Whakaputanga Moana represents the restoration of Māori and other Pacific Islanders’ autonomy to negotiate as a country and peoples, while also addressing the deficit in environmental policy by settler governments in the region (see Denton, 2017). From a broader perspective, the treaty can be viewed as a rejection of the wider culturalisation of Indigenous voices in the Pacific. Grey & Kuokkanen (2020) highlighted how culturalisation, or the focus on Indigenous cultural process rather than legal rights, is a paternalistic tool used by Western governments to deny full political autonomy to previously colonised peoples. He Whakaputanga Moana subverts this process of culturalisation through the exclusion of Western governance and directly aims to be an environmental policy.

Challenges to He Whakaputanga Moana are also likely to contradict the United Nations Declaration on the Rights of Indigenous Peoples (2007; UNDRIP). While non-binding, Article 25 of the declaration reinforces traditional ownership of lands and waters, and resources within these, which have historically included cetaceans (see Aron et al., 2000). Moreover, Article 29 provides Māori and other Indigenous communities the ability to protect these resources and, as a result, the treaty is in line with wider international law. Therefore, and as the treaty falls within the scope of UNDRIP (2007), it avoids culturalisation (see Grey & Kuokkanen, 2020) and instead draws upon transnational and fundamental rights. The treaty further represents a greater development of Indigenous rights beyond the scope of UNDRIP (2007), which only notes Indigenous political autonomy on two levels: within the settler state and in negotiation with other legitimate nations. As He Whakaputanga Moana represents negotiation outside of the nation state and instead between global Indigenous communities, it sets a precedent not encompassed by UNDRIP (2007) and further advances Indigenous transnational autonomy.

A further benefit of the treaty and its signing is the wider recognition brought to customary power structures in the Pacific. Publicity surrounding the treaty, and the various traditional leaders, kings, and elders who signed, highlight the authority of these non-state actors and the ability of Indigenous peoples to negotiate outside of dominant settler governments. The impacts of this are threefold. Firstly, by publicising Indigenous transnational governance, it reasserts the authority of traditional leaders. In doing so, it creates a space for the negotiation and signing of other treaties and reintroduces customary power structures across the Pacific. Secondly, it creates a space for other Indigenous peoples and communities to take note of their success and begin negotiating with their traditional neighbours. Finally, it creates tacit pressure on settler governments to support Indigenous treaties, particularly in countries such as Australia and Aotearoa, whose settler governments committed atrocities against the Aboriginal, Torres Strait Islander, and Māori populations. These impacts promote unity among Indigenous groups in the region, supporting greater engagement between these communities and cultures, while legitimising Indigenous voices in the Westernised international order.

However, despite these potential positives for Indigenous communities and leaders, this treaty alone does not enshrine its principles in Pacific settler government laws. Instead, He Whakaputanga Moana is a stepping stone that can create a dialogue with settler governments to increase protections within the region. There already seems to be some political movement to support the treaty, with Mere Takoko, Conversation International New Zealand vice president, stating, “I think there is going to be a domino effect, we’ve actually already had two Pacific Islands identify that they want to be first movers” (ABC News (Australia), 2024: 3.06 – 3:13). However, given the rise of conservative governments in nations such as Aotearoa, and their historic tensions with Māori communities and environmental policy (see Corlett & Tahana, 2024), such political movement could be slow.

Indigenous Sovereignty Recognition of Personhood

Stoett and Omrow (2020) noted that due to the decline in wildlife, offences towards these animals should be recognised as intrinsic forms of violence. From a species justice perspective, He Whakaputanga Moana could be seen to achieve this aim, alongside being a positive step forward in codifying species rights through international policy frameworks. This would contrast with global protections in animal welfare that frame animals as property (Nurse & Wyatt, 2020), and address the wider welfare

issues of the anthropogenic perception of unnecessary harm and accepted animal suffering (see Beirne, 1998). Rejecting this view, the treaty highlights sentience through an acknowledgement of personhood, and implies that cetaceans experience pain, complex thought, and community and, as such, should be protected. Through such a perspective, the principles embedded in He Whakaputanga Moana could be used to develop a framework for other crimes against cetaceans by human actors, including ship collisions and bycatch, and promote a criminal justice response to such offences. Moreover, this would create a space for cetaceans to be protected by civil courts, which would allow guardians to employ innovative methods to challenge any harms against them (see Sollund, 2013, 2022). Similarly, there have been policies outside of the Pacific Islands which have taken a similar approach in formally recognising species sentience, such as the United Kingdom *Animal Welfare (Sentience) Act 2022*, which, in turn, arguably grants further protections to species. Although sentience alone may not fully protect marine mammals, it should be noted that by at least considering the species' interests, this treaty demonstrates positive practice from a species justice perspective.

Although uncommon, similar cases of recognition of personhood have resulted in the improved welfare of certain species. For example, in 2015, an orangutan named Sandra was recognised as a non-human person in Argentina (Center for Great Apes, n.d.). Guardians for Sandra argued that her life was at risk in the City of Buenos Aires Zoo, who are arbitrarily violating Sandra's rights to freedom, to not be considered a thing or object, and to not suffer psychological or physical harm (Nurse & Wyatt, 2020). Following this ruling, Sandra was transferred to an ape sanctuary in Florida to better protect her rights and promote positive welfare practices (Centre for Great Apes, n.d.). Sandra's case demonstrates the protections and legal action that can come with the recognition of personhood. Favre (2010) echoed this argument, and noted legal rights are essential for ensuring that the interests and procedural rights of non-human animals are considered during legal procedures. Following this argument, He Whakaputanga Moana therefore demonstrates good practice in building species justice frameworks, alongside creating an opportunity for cetaceans to have their harms more easily recognised. Finally, and given the long lifespan of some of these animals (see Chittleborough, 1965), protecting cetaceans from harm would help preserve their interests and allow them more time with various Pacific Island communities.

Despite this, and when viewed through a species justice lens, there are still challenges with the implementation and enforcement of the treaty. Research into wildlife crime enforcement and broader environmental protections has consistently found that protecting species is not seen as a priority for law enforcement (Nurse, 2016, 2022). Additionally, factors such as corruption, the dark figure of crime, and resourcing create barriers to the enforcement of policy (Stefanus & Vervaele 2021; Wellsmith, 2011). This has been a particular issue for marine wildlife crimes, which have been viewed as a fringe area of policing and more of an environmental issue than a problem for law enforcement (García Ruiz et al., 2020; Nurse, 2023). Moreover, the nature of any offences against cetaceans taking place in the ocean poses a significant challenge for law enforcement. For example, illegal, unreported, and unregulated (IUU) fishing within ports and in the open oceans involves challenges such as detection of offences, lack of deterrence, and potential high rewards for offenders (Petrossian, 2015). However, it could be argued that by implementing personhood, this in itself could strengthen policy and act as a deterrent. Zaffaroni (2012) similarly argued that personhood recognition helps to bring legal challenges in defence of the biosphere without the need for connection to human interests. Moreover, the abundance of Polynesian communities that have a customary connection to cetaceans could also act as a deterrent, alongside informal actors to police the treaty.

Overall, from a species justice perspective, the treaty could offer a positive avenue for cetaceans and better protect their interests. However, with wider anthropocentric factors as well as potential legal difficulties, the implementation of personhood for cetaceans may take time to provide positive results.

Wider Meaning of the Treaty

From a global cetacean protection lens, and until the release of the full treaty, it is unclear how He Whakaputanga Moana will create effective protections for cetaceans and potentially provide evidence of positive practice. Until then, there are still significant risks for cetacean species globally and areas where protections are not fit for purpose. For example, in 2024, the International Fund for Animal Welfare (IFAW) and the Marine Conservation Research Organisation found that North Atlantic right whales were still critically endangered and the protections in place were not fit for purpose (International Fund for Animal Welfare [IFAW], 2024). At the time of writing, the rights created by He Whakaputanga Moana have not been codified by any Pacific Island settler government. When and if this occurs, the treaty has the potential to provide this positive policy framework and example of good practice to other regions and Indigenous peoples, and ultimately promote protections for other culturally significant species. Similar precedent has been observed since the recognition of personhood of the Whanganui River. Following this example, other rivers globally have received legal personhood, including all rivers in Bangladesh, the Magpie River in Canada and the Ganges and Yamuna rivers in India (the latter of which has been put on hold) (Benner, 2024; Blair, 2023; Islam & O'Donnell, 2020). Willems et al. (2021) discussed that, in cases of rivers, personhood has the potential to resonate

and motivate societal groups considering how to better protect the environment and, as such, lead to positive social and policy change. However, it should be noted that in some cases personhood alone has not been effective; for example, Bangladesh has had significant issues with river pollution (Faroque & South, 2022). Given cetaceans are a charismatic species, there could be similar protections extended to other charismatic endangered animals. More broadly, a recognition of any species' personhood could represent an eventual pathway for wider species justice and help to reframe the objectification of wildlife as human property (see Nurse & Wyatt, 2020). Therefore, and although in the early stages of cetacean personhood, He Whakaputanga Moana could provide a stepping stone for wider species personhood and ideas of species justice. By offering these potential protections from recognition of rights and sentience, and not as a result of human perspectives of species, this treaty offers an exemplar of good practice by taking an antispecist stance to wildlife protection. However, as noted in the beginning of this article, charismatic megafauna and other species which are perceived to have value are more likely to receive protection and public support (White & Heckenberg, 2014). As such, this could indicate that less popular species are less likely to receive public support for recognition of personhood. However, such concerns are Eurocentric and fail to account for Indigenous practices and spiritualities.

Indigenous populations' spiritual connections with species often go beyond Western perspectives of charisma or value. For example, longfin eels would not typically meet the Western idea of a charismatic species and yet hold significant cultural value for Māori populations (Jellyman, 2007). As a result, and although there may be challenges adopting and broadening personhood protections, drawing upon Indigenous cultures' spiritual connections to animals creates the space for a wider array of less traditionally protected species to be considered moving forward.

Beyond enforcement, the treaty faces significant challenges from settler governments and wider institutions of hegemonic power across the Pacific. Outside of the Aotearoa settler government, many Pacific states lack significant power within the region. Moreover, and even within Aotearoa, Māori communities continue to oppose colonial oppression such as attempts to renegotiate the Treaty of Waitangi (1840; see Armstrong, 2025) that codifies traditional ownership of the country. In such cases, He Whakaputanga Moana may have a limited impact on other powers in the region, even if there are dominant Indigenous voices in their governments, and little effect on Māori and other Polynesian populations' struggles for sovereignty. To make the treaty more robust and promote recognition beyond the Pacific, traditional leaders need to highlight the cultural significance of cetaceans to settler governments and regional powers. Doing so creates a space where not only are these mammals granted personhood and Indigenous peoples provided new avenues to respond to cetacean victimisation but also where their injury and death could be considered a form of cultural genocide (see Bilsky & Klagsbrun, 2018). This then promotes further mechanisms to protect cetaceans through processes such as the International Criminal Court. Such an approach would further project Indigenous power and regional governance on international organisations and create a space for meaningful change to the neo-colonial environmental policies enforced by the Northern metropolises. Such international attention could then highlight the struggles of Māori and other Polynesian communities, and apply tacit pressure on settler governments to revise laws that are hostile towards Indigenous peoples.

Conclusion

He Whakaputanga Moana may be an impressive document, and while it only directly speaks to cetacean protection, its negotiation and signing will cause ripples across Indigenous rights movements. By expanding the scope of legal personhood to cetaceans, it has created new, although unknown, methods to police the victimisation of multiple endangered species (see Reeves et al., 2013; see also Cooke, 2018/2019). Moreover, as signatories came from multiple states that represent a wide geographic area of the Pacific, this status of legal personhood could better protect migratory cetaceans. However, the treaty also faces significant challenges, as enforcement requires the assistance of settler governments and regional powers to be effective. In particular, ratification of the treaty in Aotearoa's current political climate may be difficult. Recent attempts by the settler government to reinterpret the Treaty of Waitangi (1840), which reinforces Māori rights (see Watson, 2024), demonstrate how precarious Indigenous authority is in Aotearoa and the wider Pacific. It is also unclear what specific protections He Whakaputanga Moana provides cetaceans, and if complaints brought before Pacific Island courts under the treaty would be upheld.

However, the signing of He Whakaputanga Moana by Indigenous high kings, chiefs, and elders represents a reclamation of transnational governance and power by these actors. It reinforces Indigenous leadership that has been weakened by colonisation and resists settler government attempts to engage in culturalisation (see Grey & Kuokkanen, 2020) by expanding legal rights to culturally significant species. Should the treaty be successful, and adopted by settler governments in the region, He Whakaputanga Moana could represent burgeoning Indigenous authority in the international order. Nonetheless, and even if not ratified by settler governments, the publicity surrounding the treaty highlights a growing space for Indigenous leadership and

governments to draw attention to the challenges facing their communities. As a result, it would be unsurprising to see similar treaties from other Indigenous groups within and outside of the Pacific.

Unfortunately, personhood alone will not be enough to protect cetaceans, as their victimisation is complex. Wildlife crime and wider threats vary globally across species and settings, and the broad scope of the He Whakaputanga Moana may limit its ability to protect certain species from certain harms. Therefore, further protections, enforcement, resourcing, and awareness programs would still be needed to prevent the victimisation, reduction, and extinction of many species. Global inconsistencies surrounding the protection of cetaceans, including legislated protections and enforcement of these (see Pavone, 2019), further complicate the preservation of various species. As such, and while the treaty is a watershed moment in species rights, it is inherently flawed.

Nonetheless, competing definitions, legislation, and enforcement mechanisms are a staple of the international community. He Whakaputanga Moana adds to this discourse and provides new scope for realising species protections and rights. Moreover, if the Aotearoa settler government hopes to continue leading the international anti-whaling efforts, their ratification of the treaty should be a priority. Doing so would highlight the important cultural histories of many Polynesian states, recognise the importance of Indigenous voices and communities for environmental protection, and add some protections to endangered cetacean species.

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¹ The authors would like to express their deepest condolences to all Māori communities for the loss of Kiingi Tuheitia.

² The use of this binary is to aid in understanding different cultures in the Pacific and their origins. It is not meant to imply total separation, as the Indigenous peoples of many Pacific countries have a combination of Melanesian and Polynesian ancestry and cultural influences (see Kayser et al., 2006).

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