

# Aquatic Animal Law – the New Frontier in Animal Law?



## PROFESSOR KATHY HESSLER

Professor Kathy Hessler, 2020 recipient of the prestigious **Excellence in Animal Law: Scholarship, Teaching and Service Award** of the Association of American Law Schools, kindly agreed to talk to Animal Voice about aquatic animals, aquaculture and the proposed industrialised farming of Octopus.

### Animal Voice:

Your major contribution to the development of Animal Law as a burgeoning field of study is acknowledged internationally with much respect. Up until recently, the focus of animal law has largely been on terrestrial animals. However, now you are at the helm of a completely new field of animal law – the legal protection of **aquatic** animals. In fact, not

only are you director of the **Aquatic Animal Law Initiative** at Lewis & Clark Law School (USA), but you have created and taught the first Aquatic Animal Law course, and you are also co-authoring the first-ever textbook on Aquatic Animal Law, due out in 2021. Can you talk a bit about the legal regulation of aquatic animals?

### Professor Hessler:

Thank you for the opportunity to talk with you and also for the work that you do. It makes a tremendous difference and I am honored to be included.

When talking about aquatic animal law, I start by defining what we mean when we say aquatic animals. When most people hear this term, they automatically think of fish. However, the term aquatic animals encompasses all animals who live in, or depend upon, marine and freshwater environments. This includes polar bears, sea otters, penguins, seals, frogs, salamanders, reptiles, snails, slugs, mussels, squid, coral, water birds, and crayfish – the list goes on and on!

Aquatic animals have been generally overlooked, by both animal advocates and lawyers, in the efforts to gain better protection for animals. Similarly, in the scientific field, their capabilities are less frequently studied than land-based animals. This lack of information and attention results in widely accepted beliefs that these animals cannot feel pain, think, or suffer. This, in a circular way, is reflected in our legal system – with aquatic animals largely ignored, or explicitly excluded from the laws conferring some legal protections for animals.

The sheer number of aquatic animals who are utilized by humans is astounding. One example is that the amount of fish killed for food is so vast that we represent the numbers in tons rather than in individual numbers of animals (as we do for

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terrestrial animals). The Food and Agriculture Organization of the United Nations (FAO) in its latest report notes that 171 million tons of aquatic animals were caught in the wild or farmed for human uses in 2016. This number does not include the millions of other aquatic animals who are unintentionally killed by the fishing industry, or by other means such as pollution, warming oceans, lack of food, ship strikes and so on.

These and other problems prompted me to start the “Aquatic Animal Law Initiative” (AALI) in 2015 as a project of the Animal Law Clinic which I direct at Lewis & Clark Law School. Specifically, AALI works to protect and promote the interest of aquatic animals by: advocating on their behalf through the legal system; promoting their value to the public by providing education about their cognitive, emotional, and physiological capacities; and harmonizing human, animal, and environmental interests.

**Animal Voice:**

Your new textbook on Aquatic Animal Law is due out next year. It’s going to be a game-changer for lawyers, veterinarians, students, policy-makers, you name it. It’s exciting. It gives one hope. Please tell us more about it.

**Professor Hessler:**

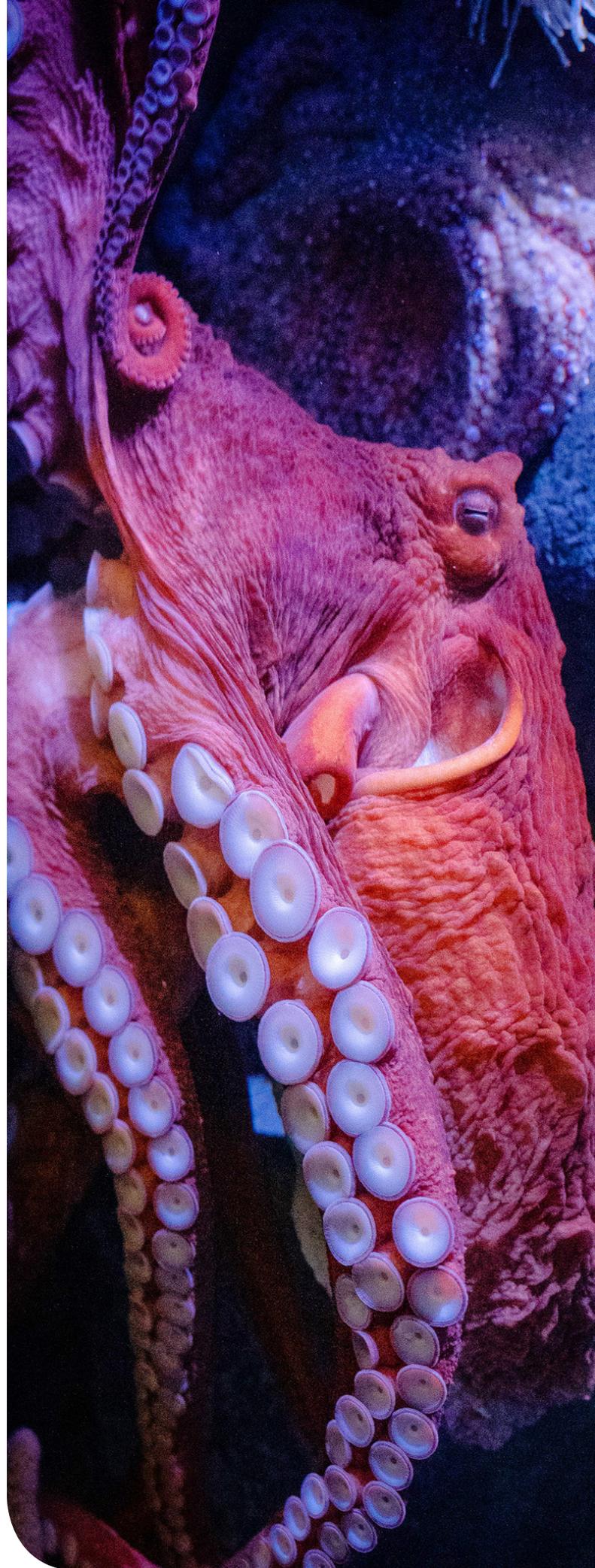
We are very excited about the book. In 2019, I taught the first Aquatic Animal Law Course to students focusing not just on legal issues, but on scientific, environmental, and social factors as well. This work prompted me to propose the textbook which I am currently working on with my great co-authors: Kelly Levenda, Rebecca Jenkins, Sonia Waismann, and our AALI Fellow, Amy P Wilson.

**Animal Voice:**

In South Africa, like the USA, our aquatic animals are facing various threats. One which has caught the attention of the public is octopus farming. Are you aware of moves to start the industrialised farming of octopuses?

**Professor Hessler:**

Human consumption of octopus is on the rise, both for food and for use in research, which is an odd juxtaposition. Just as scientists have determined that many species of octopus are fascinating, intelligent and have much to teach us, consumers are also deciding to eat more of them, with global production



more than doubling since 1980. Overfishing has resulted in the collapse of many octopus communities in the wild, and threatens many more.

It is very difficult to raise octopus in captivity as they need very special water and temperature conditions, specific food, and significant space. Raising them in captivity means killing other aquatic animals to feed to them. Workers at one facility used rubbing alcohol to make the animals drunk and easier to handle. The intelligence and creativity of the octopus makes farming them a labor and resource intensive endeavor. Companies in Spain, Japan, and Mexico are working to make farming octopus more affordable and to get the survival rate over 50% in order to make it commercially viable. These and other efforts have been underway for decades and are making progress, which does not bode well for the well-being of the octopus.



We need to realize the impact these operations are having on other animals and the broader environment, and further, we need to see the individual animals involved, to recognize that they have capacities, including the capacity to suffer and to make choices, and to ensure that the impacts of utilizing them in these ways are properly understood. In order to be effective, regulation must consider these issues holistically. In this way we can have fully informed policy discussions and then craft legal regulation to support the outcomes that have been chosen. The laws and regulations can, and should, also include mechanisms to hold relevant parties accountable for harm caused, and be properly enforced.

If this is done, we may be able to mitigate at least some of the harmful impacts we are having on these creatures, the environment more broadly, and on humans.

**Animal Voice:**

We thank you and look forward to promoting your book! ■

