Fear and Loathing in the San Juan Islands: Endangered Orcas and the Legitimacy of Environmental Law

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Although a healthy environment is generally recognized as an important public good, environmental regulation often meets significant opposition. The legitimacy of environmental law is thus very much an uncertain political project, as is evident in many struggles over environmental protection. I use and extend literatures on legal consciousness, legal geographies, and environmental regulation to analyze a controversy that emerged over efforts to regulate vessels in the presence of endangered orca whales in the Pacific Northwest. I suggest that a significant component of the opposition to these regulations stemmed from a widespread distrust and fear of the federal government. This distrust and fear were sharply accentuated by the fact that the regulations were to be imposed on the space of the sea, an area commonly viewed as best left unregulated or as deeply unregulatable. Given the arguable need for robust state action to protect the environment, on the sea as well as on land, these ambient fears are significant, and pose notable obstacles to the legitimacy of environmental law.