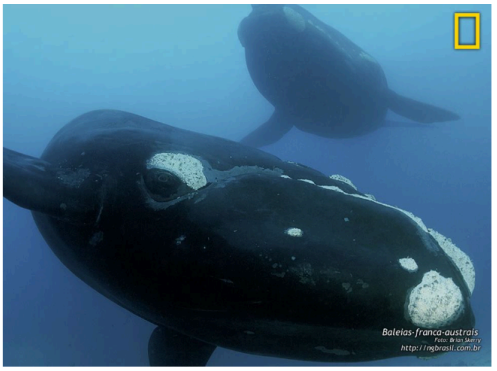
Tribunal Regional Federal da 4ª Região confirma pela segunda vez a suspensão do turismo de observação de baleias embarcado no litoral de Santa Catarina, Brasil.

The Federal Regional Court of the 4th Region confirms for the second time the suspension of whale watching tourism on board the coast of Santa Catarina, Brazil.

A ação civil pública foi movida pelo Instituto Sea Shepherd Brasil (Instituto Guardiões do Mar) em novembro de 2012. A entidade alegava que as empresas que exploram a atividade estariam desconsiderando a distância mínima de 100 metros dos animais. Além de requerer providências por parte do ICMBio, pediam a suspensão imediata da atividade.

The public civil action was filed by the Sea Shepherd Brazil Institute (Instituto Guardiões do Mar) in November 2012. The entity alleged that the companies engaged in the activity were disregarding the minimum distance of 100 metres from the animals. In addition to requesting measures by ICMBio, they called for the immediate suspension of the activity.

https://seashepherd.org.br/tribunal-regional-federal-da-4a-regiao-confirma-pela-segunda-vez-a-suspensao-do-turismo-de-observacao-de-baleias-embarcado-no-litoral-de-santa-catarina-brasil/



Whale Watching Tourism on Board (TOBE) has been suspended since May 2013 by order of the Federal Court of Laguna, after the Sea Shepherd Brazil Institute demonstrated the risks of this activity for right whales and tourists: "ICMBio authorizes, companies explore and the public participates in such activity without knowing the consequences it may cause to right whales, which, based on the precautionary principle, is sufficient to justify the suspension of right whale watching using vessels within the limits and buffer zone of the Right Whale APA in the municipalities of Garopaba, Imbituba and Laguna, until such studies are carried out and the eventual viability of the activity is verified", explains Judge Daniella Cavalheiro, in a decision that suspended the activity.

The public civil action took another turn when ICMBio itself brought to the record a document from the second largest operator of this activity, in the APA da Baleia Franca region, in which it admits the need to keep the engines running as a safety measure for tourists, even if the whales and their calves are less than 100 meters from the vessels, which means failing to comply with IBAMA Ordinance 117/96, explains the Sea Shepherd Brazil Institute.

The operator claims in the document that keeping the engines constantly running is a maneuver linked to navigational safety dictated by the region's environmental factors, such as strong winds, ocean currents, and the habit of right whales of staying less than 20 meters from the beach, which would put the vessels at risk due to the possibility of crashing into the coast if they turn off their engines or leave them in neutral. This revelation also led to the suspension of the activity by the court: "Certainly, the application of legislation protecting cetaceans and the inspection and monitoring carried out by ICMBio are not sufficient to guarantee the safety of right whales, tourists, and vessels involved in the activity, also due to the characteristics of the coastline where it is carried out and factors such as tidal movements, winds, and the movement of right whales themselves. These factors end up putting not only right whales but also tourists and those involved in the activity at risk," concludes Judge Dr. Daniella.

The tour operator reveals that: "The constant presence of south and north winds and associated ocean currents cause vessels to drift during sightings," and states that "at certain times, maneuvers for the safety of the vessel and passengers are mandatory, even if the cetaceans are at a distance closer than established by law." To verify the accuracy of this information, the Sea Shepherd Institute Brazil sent a technical inquiry to Mr. Hamilton Fernandes dos Santos, Sub-Lieutenant of the Military Police of the State of Santa Catarina, a professional with qualifications and experience in coastal navigation with 15 years of experience rescuing people at sea. Upon analyzing the tour operator's information, he clarifies: "The operator is correct in analyzing the risk factors of sailing in coves." When asked about the viability of this type of tourism in the region, he concludes: "I don't consider it viable, given the minimum criteria for navigation safety and safeguarding the lives of tourists. It also poses a high risk to whales. I have 30 years of experience in navigation and 47 years of contact with the sea. I am the son and grandson of a fisherman, and I have experienced many difficult situations at sea. Therefore, I am certain that this type of tourism is very risky in the region of the right whale environmental protection area. If it is authorized, it will not guarantee the safety of whale-watching tourists. This is confirmed by anyone who understands navigation. Therefore, I am concerned that ICMBio will allow this activity."

The Sea Shepherd Institute Brazil makes it clear that it is not against the practice of whale-watching tourism on board, and even supports its implementation in Abrolhos, Bahia, for the observation of humpback whales. However, after receiving information from the tour operator and consulting with Sub-Lieutenant Santos, it deemed it necessary to request the Federal Court to permanently suspend the TOBE in the Southern Right Whale Environmental Protection Area (APA) as a safety measure for the right whales and the tourists themselves. "In small, enclosed, and semi-enclosed coves, environmental factors exist that determine other navigation safety conditions that are incompatible with cetacean protection legislation. In Abrolhos, humpback whale watching occurs 70 km offshore, in the open ocean, which allows full compliance with cetacean protection legislation during sightings. Similarly, the Southern Right Whale Watch (TOBE) practiced in the Valdes Peninsula, Argentina, is formed by two gulfs—Nuevo and San José, 40 km and 32 km long, respectively. These fundamental and insurmountable differences determine the legality or illegality of the activity, depending on whether or not the legislation is complied with," concludes Renata Fortes, a lawyer at the Sea Shepherd Brazil Institute.

The Sea Shepherd Institute Brazil also consulted Dr. Antônio Libório Philomena, an oceanographer and retired professor and researcher at the Federal University of Rio Grande. While visiting the Southern Right Whale Environmental Protection Area (APA), he noted in his technical report, already attached to the lawsuit: "Observing the life cycle of this cetacean, it is clear that the creation of the 130-km-long APA along the Santa Catarina coast has the primary function of setting aside a coastal marine area for a nursery. This is a crucial point in phase 1 of population maintenance—reproduction, gestation, birth, nursing, and preparing the young for the great challenge of the southern migration." The researcher emphasized: "In some publications, nursery is almost synonymous with rest, tranquility, peace, and quiet." Dr. Philomena considered this tourism in small, enclosed coves to be a source of harassment for southern right whales and a serious risk to tourists.

The Federal Public Ministry, in its two statements in the lawsuit in favor of right whales, argues that the best thing for whales and tourists is to sight them from land in the region of the Right Whale APA, as it guarantees the safety of everyone and is considered environmentally sustainable.

"The Federal Regional Court of the 4th Region's upholding of the preliminary injunction upholds the main purpose of the Right Whale Environmental Protection Area (APA)—protecting right whales, listed as an endangered species, and their important breeding grounds. It also demonstrates the ISSB's rightness in filing the public civil action on behalf of these animals. Contrary to what has been alleged, the aforementioned suspension of the activity did not have a significant impact on the local economy, as there are approximately 20 (twenty) land-based whale-watching points in the region between the cities of Garopaba, Imbituba, and Laguna, providing a natural stimulus for this activity, which continues to attract tourists to the region. We understand that boat tourism cannot take place in the Right Whale Environmental Protection Area (APA), as we demonstrated in the public civil action the flagrant occurrence of undue disturbances to the animals, causing direct impacts on the whales and their calves. Through the investigation we conducted, we found that there is no constant monitoring and strict oversight of the activity in the region." – a nursery for right whales – the main reason for the existence of the environmental preservation area" – comments Luiz André Albuquerque, Legal Coordinator of the Sea Shepherd Institute Brazil.

Biologist Prof. Dr. Paula Brügger of the Federal University of Santa Catarina submitted a document to the Sea Shepherd Institute Brazil analyzing whale-watching tourism in the Southern Right Whale Environmental Protection Area (APA), highlighting the incompatibility of environmental education with an activity that violates the fundamental rights of living beings: "Genuine environmental education must be based on a biocentric perspective that advocates respect for these animals not only as an endangered species—an instrumental perspective—but also respect for the intrinsic value of each individual, the subject of a life, as postulated by philosopher Tom Regan." Dr. Brügger emphasizes: "In addition to the risk of collisions with whales, noise from vessels can adversely affect these animals' echolocation systems. Just as the sound waves they emit bounce off obstacles and return to them, sound waves from boat engines also echo in the coves, creating a space for the multiplication of waves of varying frequencies, which means an increase in the amount of "information" that these animals, in theory, have to process."

For the Sea Shepherd Institute Brazil, the unanimous decision of the Federal Regional Court upholding the TOBE suspension signifies the effectiveness of the legislation prohibiting the harassment of cetaceans, which has been flouted for years in an area designated specifically for the protection of Southern Right Whales—the nursery of this endangered species in Brazil. "Therefore, the concern is not only to encourage environmental education, as mentioned by ICMBio, and to protect the economic activity of the workers who depend on it, but, above all, the need to preserve the species in a conservation unit where proper environmental licensing is essential. The photos submitted by the petitioner, ISSB, demonstrate that human activity can endanger the reproduction of cetaceans," the Federal Justices reasoned.

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Newer
Logbook 1 – Bia Figueiredo

Older
Sea Shepherd attempts to overturn injunction ordered by US court