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# TSAS

canadian network for research on  
**terrorism, security and society**

## Working Paper Series

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No. 14-04

May 2014

### **Eco-Terrorism and the Corresponding Legislative Efforts to Intervene and Prevent Future Attacks**

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TSAS is supported as a national strategic initiative funded by **SSHRC** and **Public Safety Canada**, along with the following departments of the federal government:

- Canadian Security Intelligence Service (CSIS)
- Citizenship and Immigration Canada (CIC)
- Royal Canadian Mounted Police (RCMP)

TSAS also receives financial support from the University of British Columbia, Simon Fraser University, and the University of Waterloo.

Views expressed in this manuscript are those of the author(s) alone. For more information, contact the Co-directors of the Centre, Daniel Hiebert, Department of Geography, UBC ([daniel.hiebert@ubc.ca](mailto:daniel.hiebert@ubc.ca)) and Lorne Dawson, Department of Sociology and Legal Studies, University of Waterloo ([ldawson@uwaterloo.ca](mailto:ldawson@uwaterloo.ca)).

# Table of Contents

ACKNOWLEDGMENTS	6
SUMMARY	7
CHAPTER 1 INTRODUCTION	9
Research and Practices Related to Eco-terrorism	10
CHAPTER 2 BACKGROUND AND THE DEVELOPMENT OF ECO-TERRORISM	12
Deep Ecology	12
Direct Action and Green Anarchism	13
Environmental and Animal Rights Movement	14
Eco-terrorism as a Global Phenomenon	14
Animal Liberation Front	15
Environmental Liberation Front	15
Eco-terrorism in Canada	16
Eco-terrorism in Japan	16
CHAPTER 3 DESCRIPTION OF ECO-TERRORISM INCIDENTS BY COUNTRIES	17
Data Sources	18
Global Terrorism Database	18
Eco-Incidents Database	18
Patterns of Eco-terrorism in the U.S.	19
Attack Tactics and Target Types	25
Profile of Eco-terrorism Attacks in Canada	27
Profile of Eco-terrorist Attacks in Japan	30
CHAPTER 4 LEGISLATION RELATED TO ECO-TERRORISM IN THE U.S., CANADA AND JAPAN	34
Countermeasures against Eco-terrorism in the U.S.	34
Eco-terrorism related Legislation in the United States	34
<i>Animal Enterprise Protection Act of 1992 (AEPA of 1992)</i>	35
<i>Animal Enterprise Terrorism Act of 2006 (AETA of 2006)</i>	35
<i>USA PATRIOT Act of 2001</i>	36
<i>18 U.S.C. sec. 1864 - Hazardous or injurious devices on Federal lands of 1996</i>	36
Legal Analysis on Legislation in the United States	36
<i>Definition changes on "Offenses"</i>	36
<i>Changed on the protection scope</i>	37
<i>Summary of the Comparisons</i>	39
Other Relevant Regulations	39
Law Enforcement Operation	45
<i>Eco-terrorism related Litigation in the United States</i>	45

## Table of Contents

<i>Anti-tree spiking Act, 18 U.S.C sec.1864 (Hazardous or injurious devices on Federal lands of 1988)</i>	46
<i>Animal Enterprise Protection Act of 1992 (AEPA of 1992)</i>	47
<i>The Animal Enterprise Terrorism Act of 2006, 18 U.S.C. sec.43, par. (a)</i>	47
Legal Analysis of Litigations in the United States	48
Countermeasures against Eco-terrorism in Canada and Japan	49
Eco-terrorism related Legislation in Canada	50
<i>Canada Criminal Code of 1985</i>	50
<i>Eco-terrorism related Litigation in Canada</i>	51
Eco-terrorism related Legislation in Japan	52
<i>Eco-terrorism Litigation in Japan</i>	53
CHAPTER 5 EXAMINING THE DETERRENCE EFFECTS OF KEY LEGISLATIONS ON ECO-TERRORISM	55
Time Series	55
<i>Outcome Variables</i>	56
<i>Interventions</i>	57
Series Hazard Model	57
<i>Dependent Measure</i>	58
<i>Independent Variables</i>	58
Analyses on U.S. Data (H 3)	59
<i>Interrupted Time Series Analysis</i>	60
<i>Series Hazard Modeling on U.S. Data</i>	64
Analysis in Canada	65
CHAPTER 6 CONCLUSION	67
REFERENCES	72
APPENDIX A. THE LIST OF ECO-TERRORIST GROUPS	79
APPENDIX B. KEY WORDS	81
APPENDIX C. SANDAI HIGH COURT HEISEI 22 YEAR ( う ) No. 21	82
APPENDIX D. TOKYO DISTRICT COURT HEISEI 22 YEAR CRIMINAL ( わ ) No. 826	88



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## Working Paper Series

### **ECO-TERRORISM AND THE CORRESPONDING LEGISLATIVE EFFORTS TO INTERVENE AND PREVENT FUTURE ATTACKS**

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## ACKNOWLEDGMENTS

The primary authors of this report are Dr. Sue-Ming Yang and Dr. Yi-Yuan Su. Questions about this report can be directed to Sue-Ming Yang at the National Chung Cheng University in Taiwan (yangsueming@gmail.com) or Yi-Yuan Su at the National Chung Hsing University in Taiwan and Hokkaido University in Japan ([suyiyuan@nchu.edu.tw](mailto:suyiyuan@nchu.edu.tw); [suyiyuan@juris.hokudai.ac.jp](mailto:suyiyuan@juris.hokudai.ac.jp)).

The research underpinning this report was made possible through a grant award from *The Canadian Network for Research on Terrorism, Security & Society (TSAS)* to Professor Sue-Ming Yang, National Chung Cheng University. The views and conclusions contained in this document are those of the authors and should not be interpreted as necessarily representing the official policies, either expressed or implied, of *The Canadian Network for Research on Terrorism, Security & Society (TSAS)*.

There are many people that we need to thank who have helped us in the development of this research and in the preparation of this manuscript. We are especially indebted to the contributions of Dr. Jennifer Varriale Carson from the University of Central Missouri who provided the comprehensive Eco-terrorism Incident Database as well as valuable insights and knowledge on the nature of eco-terrorism. In addition, Dr. Paul Joosse generously shared with us his in-depth knowledge of eco-terrorism in Canada.

A number of research assistants helped us to identify, collect, and prepare data for this project. We are grateful to all of these young scholars for their commitment and interest in our work: I-Ching Jen, a graduate student at National Chung Cheng University in Taiwan, who prepared and collected much of our data, Mei-Chin Juan, a research assistant at National Chung Cheng University, who assisted with the formatting and editing of this report, and Yi-Chun Chen and Han-Yi Huang who provided additional support.

Finally we thank Vicky Baker at the University of British Columbia for keeping us on track and reminding us of the importance of completing this project.



## SUMMARY

This study reviews attacks related to eco-terrorism from 1970 to 2012, and examines the intervention effects of legislation on subsequent attacks in Canada, the United States, and Japan. Results from legal analysis identify important legislation targeting regulations on environmental and animal rights protection issues, and terrorism in general. Specifically, we included the following legal acts in our analysis: the Canada Criminal Code of 1985, the Health of Animal Act of 1990, sec. 64, par. (1), the Migratory Birds Convention Act of 1994, the Animal Enterprise Protection Act of 1992 (AEPA of 1992), the Animal Enterprise Terrorism Act of 2006 (AETA of 2006), the USA PATRIOT Act of 2001, the Anti-Drug Abuse Act of 1988 (ADA of 1988), and 18 U.S.C. sec. 1864--Hazardous or Injurious Devices on Federal lands of 1996. Additionally, highly visible, impactful legal cases were also included within this examination.

To examine the extent and trend of eco-terrorism, we collected data from two primary sources: the Global Terrorism Database (GTD) and the updated Eco-Incidents Database (EID). In total, there were 1,127 cases included in this study. Geographic distributions of the terrorist incidents across the three countries show a clear concentration pattern of eco-terrorism. The West Coast of North America seems to be a “hot” region for eco-terrorism. Whereas in Japan, while the activities are also very concentrated, most of the attacks were either inspired by anti-whaling campaigns (these attacks occurred in the ocean) or anti-airport developments.

To examine the intervention impacts, we employ both the Autoregressive Integrated Moving Average model (ARIMA) model and a series hazard modeling approach. ARIMA results show that certain legislation, such as the AETA of 2006 and the USA PATRIOT Act of 2001, deterred subsequent attacks from both animal rights groups and radical environmental groups. On the contrary, the AEPA of 1992 initiatives seemed to backfire and revealed an increased number of animal rights related attacks. The series hazard modeling reveals a similar story: For overall eco-terrorist attacks, after the ADA of 1988 enactment, there was an increase in hazard of new attacks, while a reduction in attacks resulted after the enactment of the AETA of 2006 and the USA PATRIOT Act of 2001. As for animal rights related attacks, both AEPA of 1992 and AETA





of 2006 reduced the amount of new attacks. Additionally, the enactment of the Anti-tree Spiking Act of 1996 increased hazard of attacks by radical environmental groups while the AETA of 2006 reduced the hazard of another event.

Finally, we compared the scope and nature of legislation across the three countries and argue that legislation with the comprehensive scope of protecting subject of interest could lead to successful deterrence effects on eco-terrorism.

## CHAPTER 1 INTRODUCTION

In recent years, eco-terrorism has become a new concern for many developed countries. The awareness of environmental preservation and protection has been further sharpened by several large-scale natural disasters, like Hurricane Katrina in the United States, and the tsunamis in South East Asia in 2004 and in Japan in 2011. For example, the tsunami in Japan further led to a large amount of deaths and the malfunctioning of a nuclear plant which resulted into an outbreak of public panic and heightened concerns of environmental preservation over the use of nuclear power. Tragic events like this tend to raise people's awareness on environmental protection issues (Spencer et al. 1992; Gore 2013). These situations are concerning to both society in general and to government. In the past, this type of tension tended to radicalize environmental groups to turn violent against businesses, factories, and individual/federal properties (Carson 2013; Chermak et al. 2013). To prevent eco-terrorism, it is important to understand the nature of the problem in order to design effective prevention strategies.

The damage caused by eco-terrorism attacks is not trivial. For example, in the 1990s there were a series of arsons in the Pacific Northwest targeting the logging industry that caused much damage. According to the Federal Bureau of Investigation (FBI) (2006), the Earth Liberation Front (ELF) is considered the number one domestic terrorist threat and has caused an estimated \$100 million in damage.

To respond to the threats, the U.S. has already passed several bills to prevent terrorist actions, including the Anti-Terrorism and Biological Weapons Acts of 1989, the Anti-Terrorism and Effective Death Penalty Act of 1996, and the USA PATRIOT Act of 2001 to name just a few.

Additionally, many countries have established legal mechanisms in order to prevent terrorist attacks after the shocking 9/11 incident. However, despite the increasing threat of eco-terrorism, the academic discussion focusing on the topic is still very limited. Eagan (1996) was only able to identify four citations from 1980 to 1993 concerning eco-terrorism. The situation is not much better when we consider the field of terrorism in general with Lum et al. (2006) only finding 10 rigorous studies on counter-terrorism strategies within 20,000 publications. In the past



decade, while terrorism research has received a fast growing amount of attention and much more quality studies have been published examining terrorism from various perspectives, the field of eco-terrorism has not been well studied. To date, only a few publications cover issues relating to eco-terrorism (e.g., Long 2004; Smith 2008; Carson 2013; Chermak et al. 2013). In fact, there has been only one evaluation of the deterrence effects of legislation preventing future eco-terrorism (Carson 2013). As such, we believe the results from this study could help shed light on the understanding of eco-terrorism with implications for a well-functioned legal system.

### **Research and Practices Related to Eco-terrorism**

Historically, the term terror comes from the Latin language “*terrere*” meaning “I frighten” (Mahan and Griset 2013). In 1795, the word “terrorism” was used in reference to the Reign of Terror by the French revolutionary government (Mahan and Griset 2013). However, there is still no systematic definition of terrorism that everyone agrees upon. In this study, we use the definition of terrorism used by the Global Terrorism Database: “the threatened or actual use of illegal force by non-state actors, in order to attain a political, economic, religious or social goal, through fear, coercion or intimidation” (LaFree and Dugan 2007, 184).

Eco-terrorism was listed as the most serious domestic threat by the FBI in 2005 (Carson et al. 2012). However, the definition of eco-terrorism has also not been well defined and is still very controversial (see Eagan 1996). Below, we describe different definitions of eco-terrorism adopted by both academia and law enforcement practitioners.

Most scholars agree upon the fact that the use of the pejorative “eco-terrorism” stigmatizes environmental or animal rights activists who use extreme measures to express their ideologies and to achieve their goals (see Eagan 1996). Instead of targeting human lives, these groups often fight against businesses such as logging companies, factories, research facilities, and fur companies with the goal of raising people’s awareness of environmental issues. As such, some scholars questioned the appropriateness of the terminology and wonder if this term applies a negative label on these environmental or animal rights groups (Eagan 1996; Liddick 2006).



In practice, the Federal Bureau of Investigation (FBI) has proposed a definition of eco-terrorism as “the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally-oriented sub-national group for environmental-political reason” (Buell 2009). Based on this definition, the FBI classified eco-terrorism threats facing the United States as special interest terrorism that includes the extreme fringes of animal rights, pro-life, environmental, anti-nuclear, and other movements (FBI 2002). Among which, the ALF (ALF) is considered the greatest threat in recent years. For the purposes of this study, “eco-terrorism” will be used to denote the use or threatened use of illegal force by groups or individuals, in order to protect environmental and/or animal rights.

### **Research on Eco-terrorism**

As mentioned earlier, most terrorism research focuses on international extremist movements rather than domestic activities. This gap in the research is especially pronounced for eco-terrorism as it is still debated whether radical environmentalists are terrorists (Eagan 1996). Indeed, eco-terrorist attacks usually result into a great amount of property damage, but they rarely cause casualties (Chermak et al. 2013). More recently, in many advanced countries environmental issues and eco-terrorist attacks have received more and more attention. Even countries without active environmental groups have started to pay attention to the issues as environmental disasters, such as the 3/11 tsunami in Japan, have proven to be a global issue.

Therefore, it is important to evaluate effective countermeasures preventing eco-terrorist attacks. In a comprehensive analysis of eco-terrorism, Carson (2013) concluded that the rational choice perspective can be applied to the understanding of environmental and animal rights extremists. Like regular criminals, radical environmentalists also estimate the costs and benefits of their attacks and would only consider attacking when the benefits outweigh the risks (Dugan et al. 2005; Carson 2013). Analyzing 240 eco-terrorist attacks, Chermak et al. (2013) pointed out that almost all environmental and animal rights extremists pled guilty to their crimes. Based on these findings, it is possible that the activities of eco-terrorists can be deterred and as such, it is crucial to examine the deterrence effects of relevant legislation relevant to eco-terrorism.



To better understand the preventative effects of legislation on eco-terrorism, we sought to combine two academic disciplines--criminology and legal studies. This final report is divided into six chapters. Chapter Two reviews the development of eco-terrorism and provides a basic profile of some active groups. Chapter Three describes the two principal datasets used in our analysis: the Global Terrorism database (GTD) and the Eco-Incidents Database (EID). It also provides an analysis to explore the extent of eco-terrorist threats in three countries—the United States, Canada, and Japan. We also examine targets, weapons, tactics, and property damage loss due to attacks over time. Basic geospatial distribution analysis of eco-terrorist incidents is also included in Chapter Three. In Chapter Four, we conduct a comparative legal analysis examining the anti-terrorist laws and legal regulations regarding environmental development in these three countries. From the results of our analysis, we identify some key legislations and litigations for further analysis. Chapter Five examines the effects of the selected legislation using a time series analysis approach. Due to data availability, time series analysis was only performed for activities in the United States and Canada. To further examine whether the selected legislation affected the hazard of attacks, we also conducted series hazard model and discuss the results. In Chapter Six we summarize our findings and provide some brief suggestions for public policy related to attacks committed by environmental/animal right groups.

Overall, our report represents a major achievement of interdisciplinary research between criminology and legal studies. The collaboration enables the research team to see how best our research results might inform policy and guide the future for better understanding and response to security threats of eco-terrorism. We trust that this report helps in part to achieving this goal.

## **CHAPTER 2 BACKGROUND AND THE DEVELOPMENT OF ECO-TERRORISM**

### **Deep Ecology**

The Norwegian philosopher, Arne Naess, proposed deep ecology theory in 1973 and has been advocating for the international deep ecology movement since then. Naess divided ecological orientation into a human-oriented perspective and an environmental guided approach. The latter forms the basis of deep ecology. The central idea of deep ecology is that every creature has



intrinsic value (Goodwin 2007) and that all creatures deserve equal respect and privilege. Everything on earth is equally important; whether the being is a person, an animal, or a stone. However, human beings often break the balance of the food chain and are sometimes viewed as the biggest enemy to nature, as they consume most of the resources in earth but yield little in return. Thus, deep ecology is sometimes considered to demean human beings. Deep Ecology has a huge influence on many animal rights and environmental activists and has inspired the modern environmental movement (Eagan 1996; Liddick 2006; Carson 2013). Despite a common philosophy and a common goal of environmental protection, different groups follow different methodological approaches. While mainstream environmental groups adopt non-violent ways like advocacy to achieve their goals, other groups tend to use more radical tactics which are often referred to as “direct actions.”

### **Direct Action and Green Anarchism**

The direct action activists tend to respond to environmental issues with more radical methods including strikes, sit-ins, revolutions, and demonstrations; many of which cause economic damage (Loadenthal 2013). The direct action taken can also include nonviolent and less violent activities, such as those that target property; although, whether the destruction of property is in the range of non-violent action remains debatable.

Eagan (1996) argues that Greenpeace was the first environmental organization to use direct action to protest American nuclear testing in 1971. In order to achieve its goal, a small team of activists set sail from Vancouver to Alaska to sabotage a nuclear test site. In addition to Greenpeace, other groups such as the Earth Liberation Front (ELF) and the ALF utilize the direct action approach. Members of these groups believe that their actions are only violent if used against human beings or other animals. As such, the destruction of property is not considered violence and is justifiable (Goodwin 2007; Loadenthal 2013).

The movement is commonly referred to as “green anarchism” and combines elements of anarchism with environmentalism. The green anarchists fight against modernization and capitalism, and commit to protect the environment through direct action. Many members of the ALF



and the ELF are green anarchists who target those considered to be harming the environment. Therefore, green anarchists have launched attacks against food processing plants, leather companies, logging factories, and research facilities.

### **Environmental and Animal Rights Movement**

Due to different ideologies there is a clear division between groups that focus on animal rights and those that focus on environmental protection. The largest distinction between the two is that animal rights activists do not include inanimate objects like rivers and trees while the environmental groups are concerned about the ecological system as a whole.

The origins of animal rights can be traced back to nineteenth-century Britain. In 1824, the first animal protection group, the Society for the Protection of Animals (SPCA) was established. However, it was not until the mid-1870s that people began to be concerned about animal rights within the context of medical experiments when Peter Singer and Tom Regan, two famous advocates of the animal rights movements, began to educate the public. Singer's book, *Animal Liberation*, is considered to be the guidebook of Animal Liberation movement.

### **Eco-terrorism as a Global Phenomenon**

To understand the nature and the active perpetrators behind eco-terrorism, we compiled a list of all eco-terrorist groups that have been verified by our aforementioned definition (see Appendix A) and their corresponding number of attacks. The most active radical eco-terrorist groups are the ALF and the ELF. As such, below we devote special attention to them and hope the in-depth analysis can provide further understanding of the nature of the phenomenon, and on the potential preventative practices and legal reactions to the issues they raise.

The ALF was established in 1976 and the ELF was founded in 1992. During the past decade, these two groups and related splinter groups have been considered by the FBI as a serious domestic terrorist threat in the U.S. According to FBI statistics, these groups have committed more than 1,100 criminal acts in the U.S. since 1976. Below we review these two organizations in more detail.



## **Animal Liberation Front**

The Animal Liberation Front (ALF) was established in Great Britain in 1976. The organization follows a flat structure model and has no membership lists or official leaders recognized within the organization. As a result, ALF considers anyone who carries out action following the ALF guidelines to be an ALF activist. Despite the numerous attacks on fur companies, animal laboratories, and farms since 1976, ALF claim that no single human or animal has ever been hurt as a result of their activities and therefore contest the eco-terrorism classification. However, the empirical data show this is not necessarily the case. According to the Global Terrorism Database (GTD) and Eco-Incidents Database (EID), there have been 403 attacks by the ALF and those associated with the ALF from 1970 to 2011, including one assassination and twenty-seven explosions. Furthermore, the ALF members have also actively engaged in targeting biomedical researchers using tactics such as bombings of facilities and assassinations of researchers to achieve their goals.

## **Environmental Liberation Front**

Environmental Liberation Front (ELF) also encourages the use of direct action against those who threaten the environment. ELF is a splinter of another radical environment group, Earth First!. Much like Earth First!, ELF engages in illegal actions like the destruction of property (Carson et al. 2012). ELF was originally based in the United Kingdom and then in 1993, they soon spread to continental Europe, New Zealand, and Australia, and in 1997 to the United States (Joosse 2007, 2012).

The ELF has committed acts of environmental destruction through various tactics, but arson is the most common method. For example, to protect a lynx habitat, the ELF burned down a ski resort in Vail resulting in \$12 million in damages. Within the Global Terrorism Database and the Eco-Incidents Database combined, there are records of 230 attacks committed by ELF or ELF associates from 1970 to 2011 with fifty-one out of the total incidents being arson. Out of the recorded 1,108 attacks committed by or related to active/ radical environmental and radical animal rights groups/individuals in the continental United States, 336 attacks were initiated by the ALF





and 225 attacks were initiated by the ELF resulting in two injuries.

Despite their different focus, some members of the ALF and the ELF have formed a group called “the Family.” The Family committed an estimated \$48 million worth of arson and vandalism from 1996 through 2001. Due to the extensive property damage, the FBI launched a preventive operation called Operation Backfire targeting them. To date, Operation Backfire investigators have solved more than forty criminal acts done by the Family ranging from vandalism to arson, and as for now, many members of the Family have been incarcerated (Federal Bureau of Investigation 2008).

### **Eco-terrorism in Canada**

Though eco-terrorist attacks are more prevalent in the United States, due to the geographic proximity, the above-mentioned groups also attack targets in Canada. Likewise, some groups which are based in Canada have launched attacks within the United States. For example, a high-profile Canadian eco-terrorist, Paul Watson—the founder of the Sea Shepherd Conservation Society—encourages the use of extreme measures for marine conservation in North America.

The Canadian Government also considers eco-terrorism to be one of their leading domestic threats. In a report entitled, *Public Safety Canada*, it is argued that environmentalists could be a major hazard to Canada (2013).

### **Eco-terrorism in Japan**

On the other hand, eco-terrorism in Japan is very different from what is observed in the United States and Canada due to its whaling tradition. In recent years the International Whaling Commission (IWC) prohibited commercial whaling. Thus, whaling activities are now under the supervision of many environmental groups and the global community. Japan continues its whaling tradition for scientific research as well as cultural heritage preservation. As a result, whaling activity in Japan has been targeted by anti-whaling organizations and led to many attacks conducted by environmental and animal rights extremists (International Whaling Commission 2014).



Despite being called cruel and barbaric, whaling in Japan could be traced back as early as the 12th century, with modern whaling activity beginning in the 1890s. Whale meat is a common dietary item for people who live in offshore regions. This long history of whale consumption was especially prominent during World War II when there was a shortage of food in Japan and whale meat became a major source of protein. Hence, for the Japanese, especially for the older generation, eating whale meat carries special significance. In fact, the Japanese have long embraced a whaling culture. Whaling reminds some Japanese of their historical past and how their society has transformed and reestablished after the defeat of the war (Japan Whaling Association 2014).

In sum, the conflicts between the anti-whaling movement and fishers in Japan are partly clashes between cultures. And with the strong commitment to environmental fundamentalism, it is very difficult for the anti-whaling groups and the global community to understand the issue from the Japanese perspective. According to the Institute of Cetacean Research<sup>1</sup>, Greenpeace and the Sea Shepherd Conservation Society have repeatedly sent ships to attack the Institute's vessels and sabotage their research in the Antarctic. Dr. Seiji Ohsumi, the Director General of the Institute of Cetacean Research, referred to these actions as eco-terrorism (2001). As a result, Paul Watson and other members of Sea Shepherd are currently prohibited by the U.S. courts from approaching or harassing Japanese whalers.

Aside from the whaling inspired conflicts, Japanese environmentalism has been sparked by natural disasters. In 2011, a tsunami that hit Japan led to a breakdown of a nuclear plant, causing local nuclear pollution, and global nuclear disaster panic. This tragic event also deepened the worries of environmental groups regarding the safety of nuclear power and potential pollution.

### **CHAPTER 3 DESCRIPTION OF ECO-TERRORISM INCIDENTS BY COUNTRIES**

The data used in this study came from two major sources: the Global Terrorism Database and the Eco-Incident Database. Below we describe these two databases in detail.

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<sup>1</sup> List of attacks related to the groups could be found on <http://www.icrwhale.org/News.html>.



## Data Sources

### Global Terrorism Database

The Global Terrorism Database (GTD) is an open-source database including information on terrorist events around the world from 1970 through 2012. According to LaFree (2010), GTD was launched by computerizing data originally collected by the Pinkerton Global Intelligence Service (PGIS). The GTD is a compilation of distinct data collection efforts from 1970 to the present. Information is not added to the GTD until the source has been verified to be credible. This database includes at least forty-five variables for each case such as the date, country, summary, group name, target, weapon, attack types, and property value. To identify eligible cases related to eco-terrorism, we examine the group names and search for key words like animal, environment, logging, nuclear, and whale (see Appendix B for a complete list of keywords used in the search process). After possible matches were found, the summary of each record was reviewed to determine whether each case related to eco terrorism.

### Eco-Incidents Database

Carson et al. (2012) compiled the Eco-Incidents Database (EID) to include criminal incidents perpetrated by members of radical environmental and animal rights groups in the United States from 1970 to 2007 (62). The incidents included in the EID are “illegal activity in the United States from 1970 through 2007 that was principally motivated to protest the destruction or degradation of the environment, the mistreatment of animals, or both” (2). The EID was primarily drawn from two sources: (1) the Global Terrorism Database (1970-2007) and, (2) the Foundation for Biomedical Research Illegal Incidents Chronology. Additionally, the EID was supplemented through several open sources and various organizational websites. Since the EID only collected information up to 2007,<sup>2</sup> for this project we extended the cases examined through 2012 by utilizing the GTD.

We also worked with our research collaborator Paul Joosse to collect cases that occurred in Canada that were not originally included in either the GTD or EID. Meanwhile, we worked

<sup>2</sup> For more information about the EID database, see Carson (2013) and Carson et al. (2012).



with Japanese speaking researchers to go through legal cases and literature published in Japan to identify relevant incidents that occurred there. We combined cases from multiple sources to form a single eco-terrorism database and removed all duplicates. As such, the final database represents the most comprehensive collection of eco-terrorism incidents across the three countries that we know of. In total, there are 1,166 eco-terrorism incidents identified in this process; out of which, 1,141 incidents occurred in the continental United States, eight events were related to Canadian targets, and seventeen incidents occurred in Japan.

Below we describe the nature and the characteristics of eco-terrorism attacks by country. To better understand the different orientation of environmental groups and animal rights groups we also disaggregated the incidents by ideology.

### **Patterns of Eco-terrorism in the U.S.**

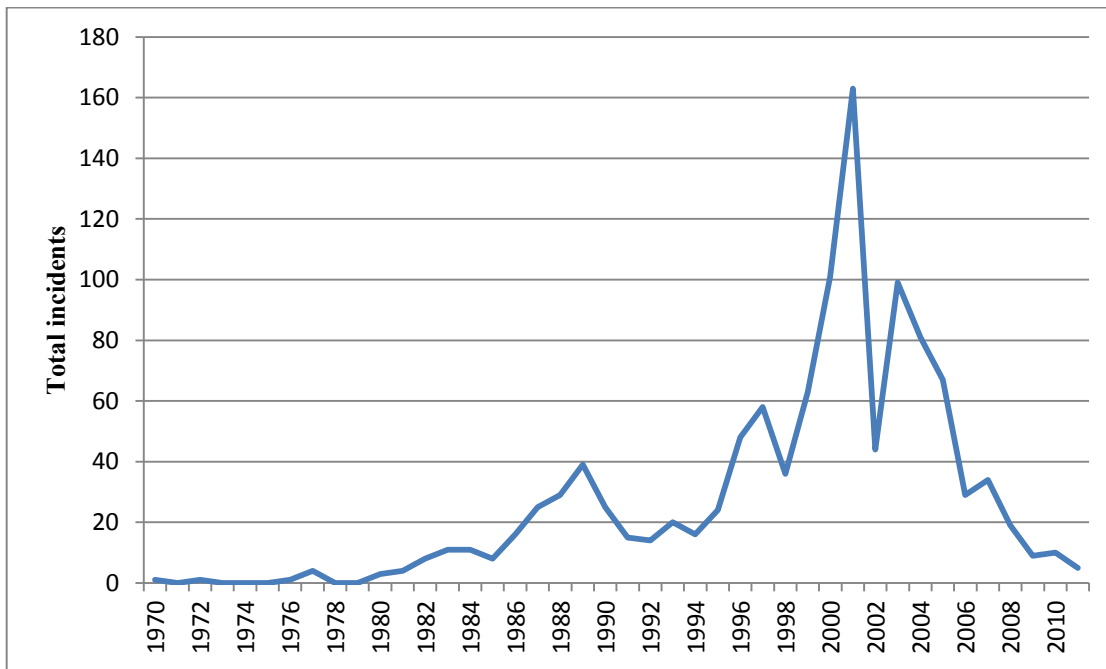
The general trend of eco-terrorism incidents from 1970 to 2012 is shown in Figure 3-1. The line graph shows that the number of incidents increased from 1987, reached a first peak of forty incidents in 1989, and then declined gradually. Starting from 1999 the number of incidents rose rapidly and reached a peak of 163 incidents in 2001. But the number of incidents drops sharply in 2002 before picking up again in 2003 with 100 events. After 2003, the number of incidents continued to decline.

When we break down by the type of eco-terrorism, the trends of animal rights attacks and environmental groups are generally close to each other, except in the year of 2001 when the number of attacks of environmental groups reached an all-time high.

On the contrary, not all type of eco-terrorist attacks followed the same developmental trend. Attacks motivated by extreme environmentalists peaked rapidly in 2001 and declined sharply soon after. Animal rights attacks, however, rose around 1996 and continued the intensity of attacks for about one decade (see Figure 3-2) before the downward trend.



FIGURE 3-1. TOTAL INCIDENTS PERPETRATED BY ECO-TERRORIST GROUPS IN US, 1970-2012.



Eco-terrorism has been noted to cause huge financial loss (Chermak et al. 2013) with only a few attacks. Just like the “black swans” phenomenon referred to by Gary LaFree (2013), a small amount of these types of incidents tend to fall outside the realm of regular expectations and have a high impact against prediction.

Eco-terrorist incidents seem to follow the black swan prediction. In Figure 3-3, we notice that incidents that occurred in certain years led to a huge amount of property damage. For example, in 2000, only 101 incidents caused \$35,556,750 worth of damage while in 2001, 163 incidents caused \$13,191,974 worth of damage.

Again, when we separate the amount of property damage by ideological orientation, we notice an interesting difference. The amount of total property damage resulting from the attacks of animal rights groups show a uni-modal trend, while the property loss due to environmental groups’ attacks form a bi-modal trend line. It is interesting to see whether any policy changes occurred during the period between 1998 and 2004 (see Figure 3-4).



FIGURE 3-2. THE INCIDENTS PERPETRATED BY RADICAL ANIMAL RIGHTS GROUPS AND RADICAL ENVIRONMENTAL GROUPS IN US, 1970-2012.

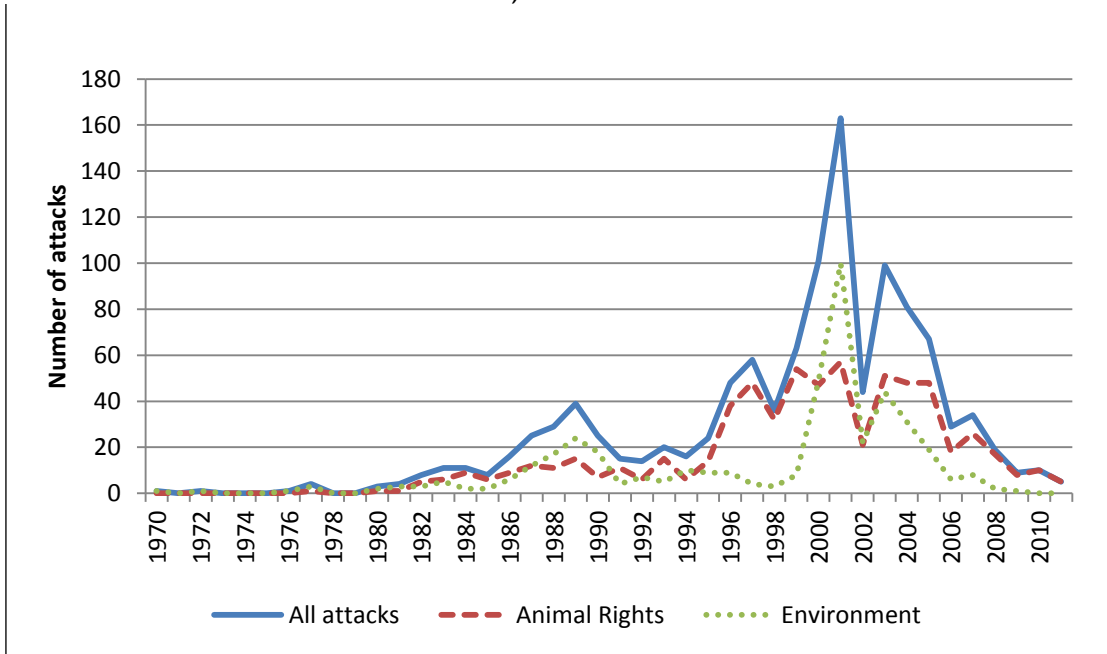


FIGURE 3-3. THE VALUE OF PROPERTY DAMAGE (IN U.S. DOLLARS) BY ECO-TERRORIST GROUPS IN U.S., 1970-2012.

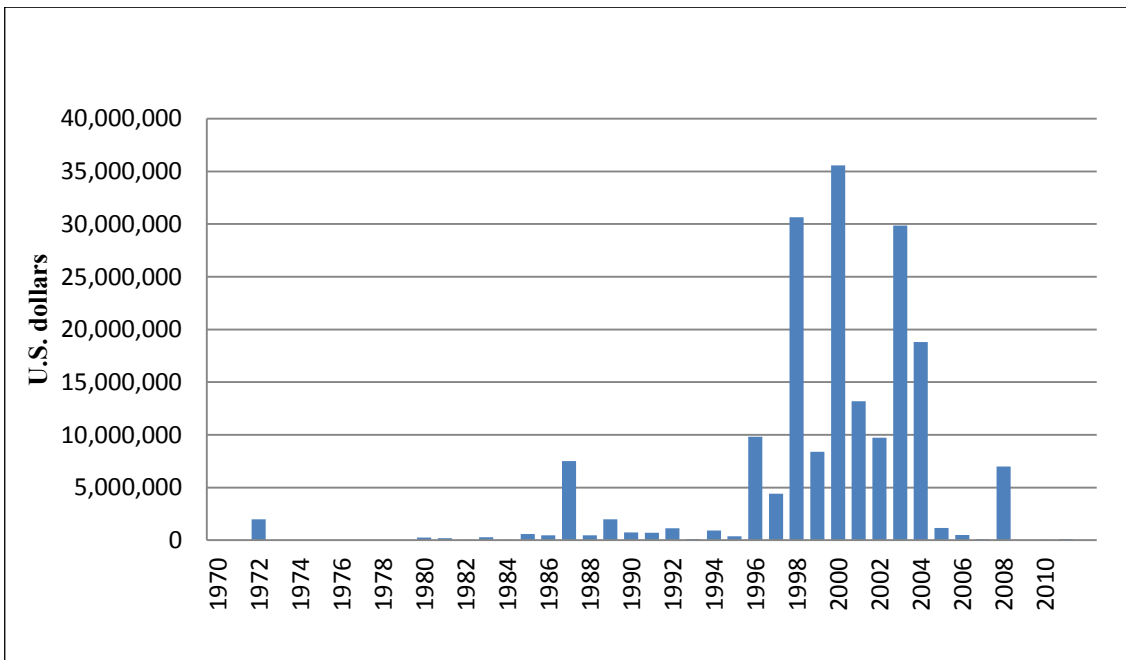
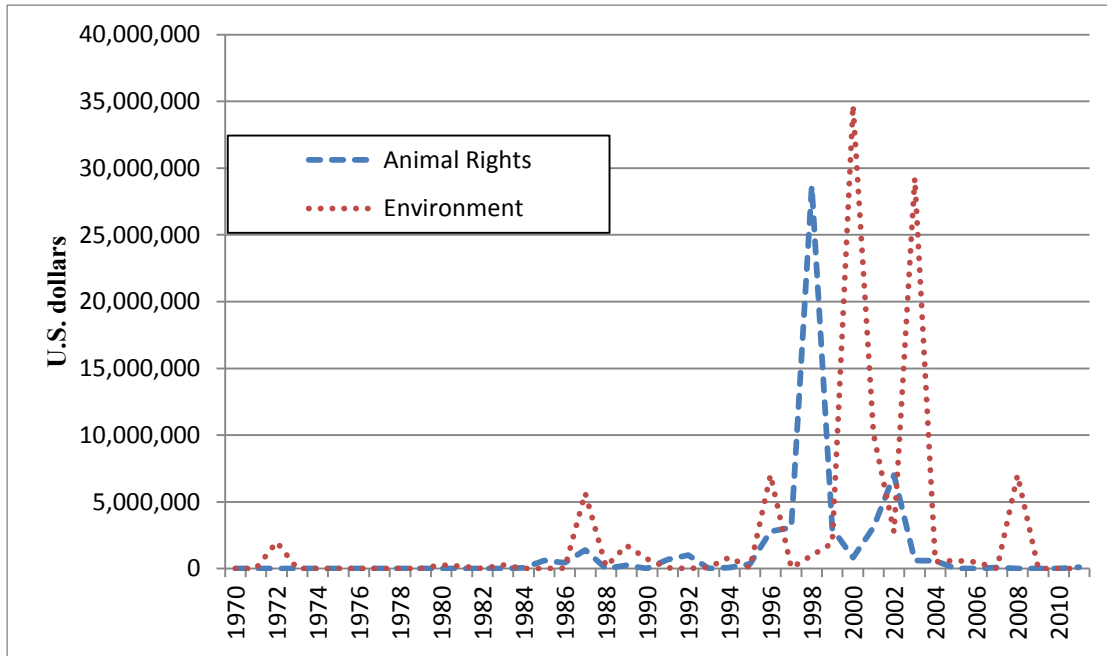




FIGURE 3-4. THE VALUE OF PROPERTY DAMAGE (IN U.S. DOLLARS) BY RADICAL ANIMAL RIGHTS GROUPS AND RADICAL ENVIRONMENTAL GROUPS IN THE US, 1970-2012.

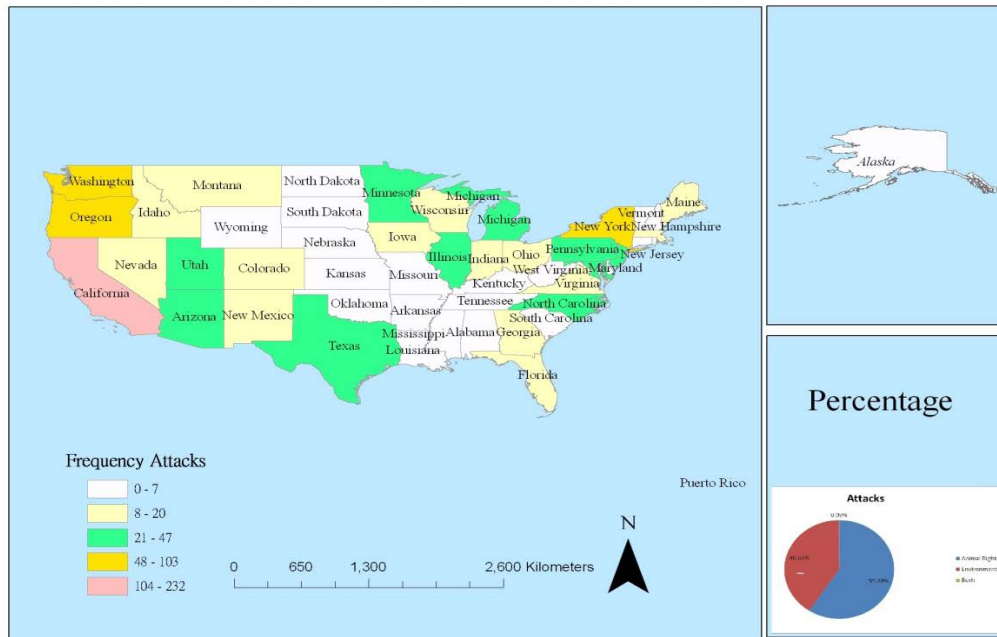


The geographic distributions of the attacks in the United States are shown in the map (see Figure 3-5). This map demonstrates that the attacks by extreme environmentalists tend to cluster in California, Oregon, Washington, and New York, with California being the most likely target of attacks.

We next break down the data into three categories: animal-related, environment-related, and both. The proportion of animal-related attacks is 59.28%, the proportion of environment-related attacks is 40.63%, and the proportion of attacks related to both ideologies is 0.09% (shown in the bottom right pie chart of Figure 3-5).



FIGURE 3-5. DISTRIBUTION OF ECO-TERRORISM ATTACKS IN THE U.S.



Sources: Data from GTD (2014) and Carson (2012).

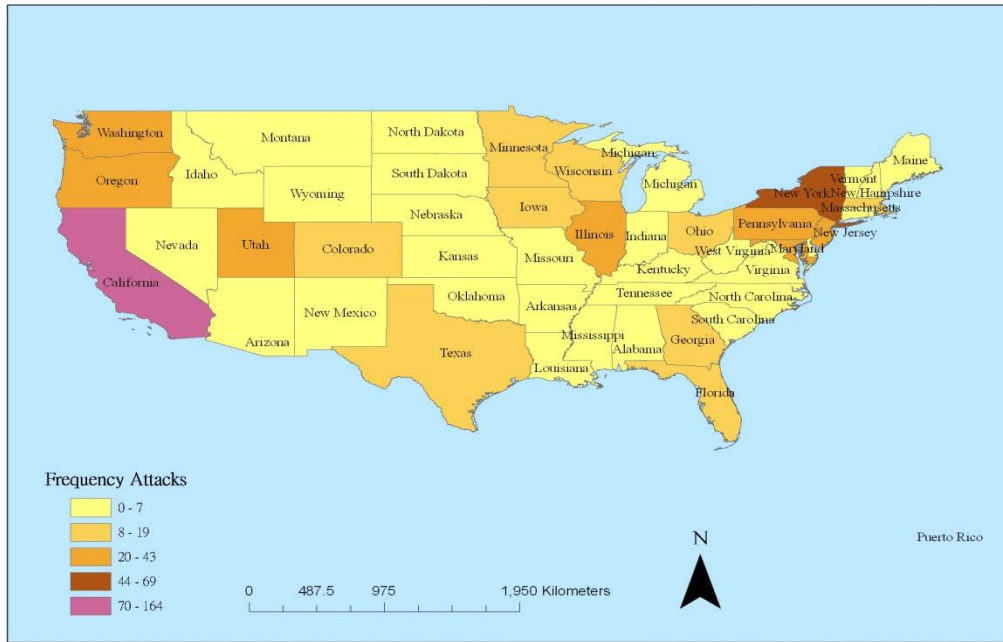
The attacks committed by each ideological group are shown on the maps in Figure 3-6 and Figure 3-7. Due to the negligible number of attacks in Alaska, we decided to focus on the distributions of attacks that occurred in the continental United States.

Figure 3-6 shows the geographic distribution of animal rights inspired attacks. The highest number of attacks concentrated in California and New York. Again, California has the highest risk of being attacked. On the other hand, attacks by extreme environmental groups or individuals tend to cluster around the west coast including California, Oregon, and Washington (see Figure 3-7). California still has the highest hazard of being attacked.



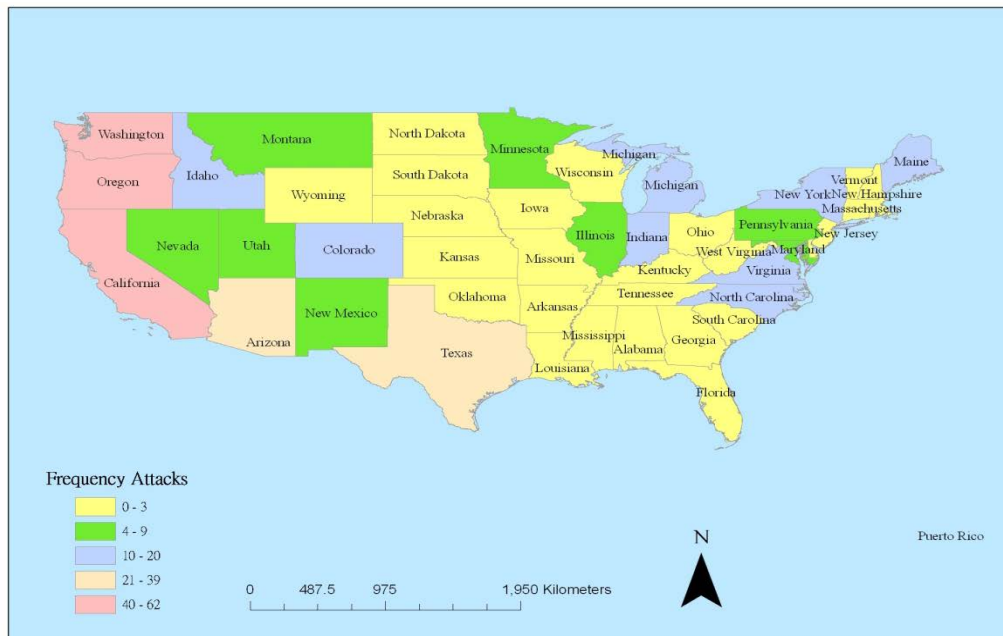


FIGURE 3-6. DISTRIBUTION OF ATTACKS OF RADICAL ANIMAL RIGHTS GROUPS IN THE U.S.



Sources: Data from GTD (2014) and Carson (2012).

FIGURE 3-7. DISTRIBUTION OF ATTACKS OF EXTREME ENVIRONMENTAL GROUPS IN THE U.S.



Sources: Data from GTD (2014) and Carson (2012).



## Attack Tactics and Target Types

Table 3-1 shows the frequency analysis of attack types. The results demonstrate that targeting facilities and infrastructure is the most common tactic out of all total attacks. Though both extreme environmentalists group and ALF claim that they have no intention to cause any casualties, the reality seems contrary to their wording. In Table 3-1, about 5-6% of the total attacks were considered arsons or bombings. We also examined the data thoroughly and identified the extent of fatalities caused by these groups. We identified one lethal incident perpetrated by radical animal rights groups on February 8, 1990 in which the Dean of the University of Tennessee Veterinary School was shot and killed in his driveway.

Additionally, there are twelve cases with human injuries found in our data. Although the number of casualties is not extremely high compared to common terrorism incidents, these findings challenge the peaceful claims made by radical environmental and animal rights groups. Perhaps the choice of attack method also determines how likely an attack would lead to human casualties and when a group becomes radicalized, how difficult it is to refrain from using methods that are less “effective” to achieve its ultimate goals.

TABLE 3-1. ATTACK TYPES BY GROUP

ATTACK TYPE	ANIMAL N=645		ENVIRONMENT N=442		BOTH N=1		TOTAL N=1088	
	N	%	N	%	N	%	N	%
Assassination	3	0.47	1	0.23	0	0.00	4	0.37
Armed Assault	18	2.79	38	8.60	0	0.00	56	5.15
Bombing	34	5.27	30	6.79	0	0.00	64	5.88
Facility	588	91.16	380	85.97	1	100.00	969	89.06
Unarmed Assault	21	3.26	12	2.71	0	0.00	33	3.03
Unknown	2	0.31	1	0.23	0	0.00	3	0.28
Total	645	100.00	442	100.00	1	100.00	1088	100.00



In terms of target types, as shown in Table 3-2, businesses are the most common target of attacks (70.77%). This result is understandable when targets of radical environmental groups and radical animal rights groups are considered: logging facilities, ski resorts, fur factories, and companies using animal testing for their products. Unlike other terrorist attacks, eco-terrorists have never targeted diplomats or transportation with only one attack occurring on a military base. This finding highlights the uniqueness of eco-terrorism compared to other terrorist activities.

TABLE 3-2. TARGET TYPES BY GROUP

TARGET TYPE	ANIMAL N=645		ENVIRONMENT N=442		BOTH N=1		TOTAL N=1088	
	N	%	N	%	N	%	N	%
Business	455	70.54	315	71.27	0	0.00	770	70.77
Government (General)	25	3.88	32	7.24	1	100.00	58	5.33
Diplomatic	0	0.00	0	0.00	0	0.00	0	0.00
Educational institution	90	13.95	20	4.52	0	0.00	110	10.11
Maritime	1	0.16	0	0.00	0	0.00	1	0.09
Private Citizens & Property	56	8.68	42	9.50	0	0.00	98	9.01
Transportation	0	0.00	0	0.00	0	0.00	0	0.00
Utilities	0	0.00	14	3.17	0	0.00	14	1.29
Unknown	2	0.31	0	0.00	0	0.00	2	0.18
Other	26	4.03	21	4.75	0	0.00	47	4.32
Total	645	100.00	442	100.00	1	100.00	1088	100.00

Though various weapons have been utilized in eco-terrorism related attacks, in most cases, the type of weapon is not recorded in our dataset. As such, we are unable to derive a firm conclusion on this characteristic.



TABLE 3-3. WEAPON TYPES BY GROUP

WEAPON TYPE	ANIMAL N=645		ENVIRONMENT N=442		BOTH N=1		TOTAL N=1088	
	N	%	N	%	N	%	N	%
Biological/chemical	9	1.40	3	0.68	0	0.00	12	1.10
Firearms	3	0.47	1	0.23	0	0.00	4	0.37
Explosives/Bombs/Dynamite	23	3.57	19	4.30	0	0.00	42	3.86
Fake weapons	6	0.93	3	0.68	0	0.00	9	0.83
Incendiary	88	13.64	91	20.59	1	100.00	180	16.54
Melee	18	2.79	1	0.23	0	0.00	19	1.75
Sabotage equipment	15	2.33	64	14.48	0	0.00	79	7.26
Other	13	2.02	4	0.90	0	0.00	17	1.56
Unknown	488	75.66	264	59.73	0	0.00	752	69.12
No weapon	2	0.31	0	0.00	0	0.00	2	0.18
Total	645	100.00	442	100.00	1	100.00	1088	100.00

### Profile of Eco-terrorism Attacks in Canada

Based on our definition of eco-terrorism and assistance from Dr. Paul Joosse, we are only able to identify eight incidents by radical environmental and animal rights groups that occurred within Canada. Due to this infrequent number of attacks, we describe the attacks qualitatively below.



TABLE 3-4. CHARACTERISTICS OF ECO-TERRORISM INCIDENTS IN CANADA, 1970-2012

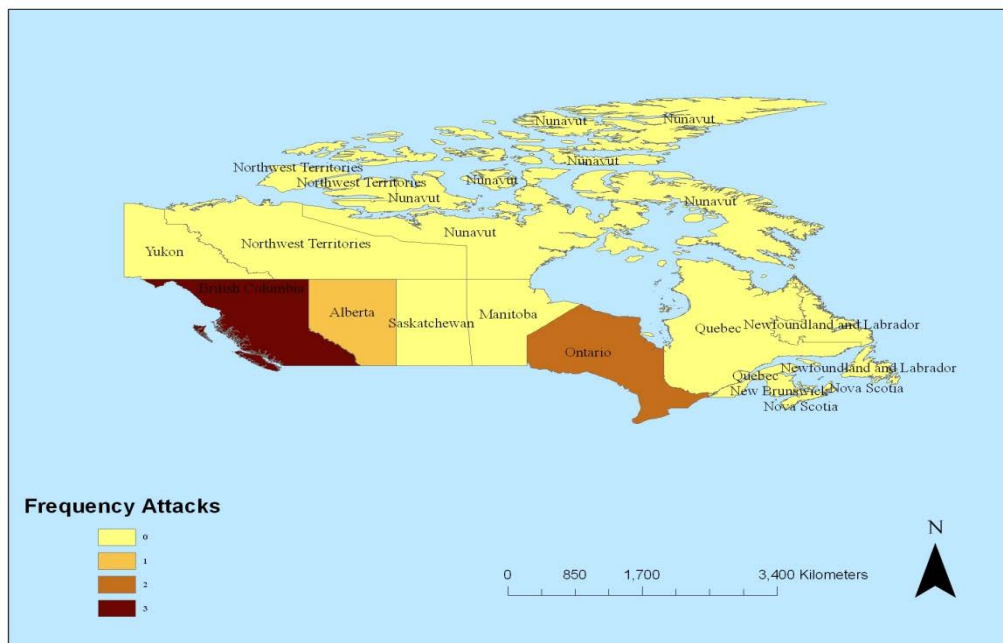
Case	Date	Classification	Attack type
1	1982/05/30	Environment	Bombing/ Explosion
	Target type	Weapon type	Group name
	Government (General)	Explosives/Bombs	The Squamish Five
Case 2	Date	Classification	Attack type
	1992	Animal	Unknown
	Target type	Weapon type	Group name
Educational Institution	Unknown	ALF	
Case 3	Date	Classification	Attack type
	1994/05/12	Animal	Bombing/Explosion
	Target type	Weapon type	Group name
Business	Explosives/Bombs	ALF	
Case 4	Date	Classification	Attack type
	1995/06/19	Animal	Bombing/Explosion
	Target type	Weapon type	Group name
Private citizens & property	Explosives/Bombs	ELF	
Case 5	Date	Classification	Attack type
	2006/01/30	Environment	Facility
	Target type	Weapon type	Group name
Private citizens & property	Incendiary	ELF	
Case 6	Date	Classification	Attack type
	2006/06/27	Environment	Facility
	Target type	Weapon type	Group name
Private citizens & property	Incendiary	<i>ELF</i>	
Case 7	Date	Classification	Attack type
	2008/08/23	Animal	Facility
	Target type	Weapon type	Group name
Business	Unknown	ALF	
Case 8	Date	Classification	Attack type
	2008	Environment	Bombing/Explosion
	Target type	Weapon type	Group name
Business	Explosives/Bombs	Unknown	

The activity in Canada concentrates on attacks against facility/infrastructure using bombing/explosion. It is apparent that most attacks perpetrated in Canada were initiated by the ALF and ELF.

Geographically, it is worth mentioning that these eight attacks all cluster around the Canada–United States border: two of the attacks in Alberta, four attacks in British Columbia, and two

attacks in Ontario (see Figure 3-8). Though there have been only a handful of eco-terrorist incidents that occurred on Canadian soil, we should not overlook the threats coming from nearby regions. The close geographic, economic, and social proximity between the U.S. and Canada justify why we should take into account eco-terrorist incidents from the bordering states in the U.S. to understand the interaction effects of legal regulations and incidents between the two countries. The significance of the bilateral collaboration between the U.S. and Canada was highlighted by the case of *United States vs. Barbarash* (2002). As such, we included eco-terrorist incidents that occurred around the US-Canada border in time series analysis to see if legislation in Canada has impacts on activities in the bordering region.

FIGURE 3-8. DISTRIBUTIONS OF ECO-TERRORIST ATTACKS IN CANADA, 1970-2011

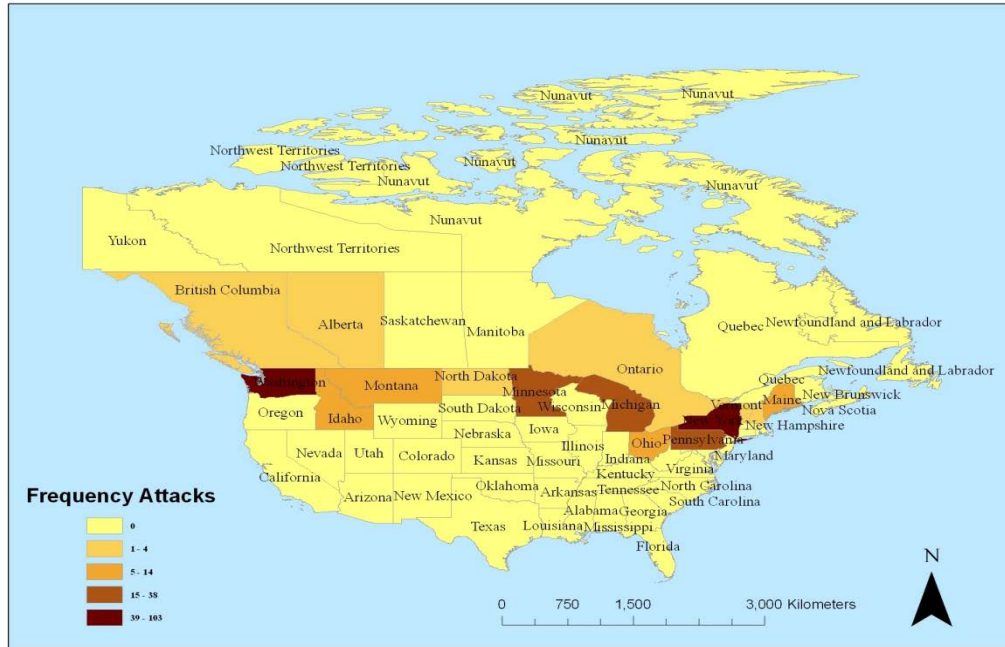


Sources: Data from GTD (2014) and Carson (2012).

When we include the U.S. attacks that occurred around the Canada-U.S. border on the same map, then it is clear to see that the border between British Columbia in Canada and Washington State in the U.S. is the hot spot of eco-terrorism, perhaps due to the fact that the connected border serves as a travel passage for those perpetrators (see Figure 3-9).



FIGURE 3-9. DISTRIBUTION OF ECO-TERRORIST ATTACKS ALONG THE CANADA-U.S. BORDER



Sources: Data from GTD (2014) and Carson (2012).

### Profile of Eco-terrorist Attacks in Japan

The extreme environmentalists' attacks in Japan targeted two major issues. One set of attacks was aimed at Narita Airport to block the opening of the Chiba Prefecture airport, which was built on land expropriated from local farmers. The other set of attacks focused on whaling fishermen and was perpetrated by Sea Shepherd and Green Peace (see Table 3-5).



TABLE 3-5. CHARACTERISTICS OF ECO-TERRORISM INCIDENTS IN JAPAN, 1970-2012

Case 1	Date 1978/03/26	Classification Environment	Attack type Facility
	Target type Airports & Airlines	Weapon type Incendiary	Group name Airport Protesters
Case 2	Date 1978/05/07	Classification Environment	Attack type Assassination
	Target type Private Citizens & Property	Weapon type Incendiary	Group name Airport Protesters
Case 3	Date 1978/12/19	Classification Animal	Attack type Unknown
	Target type Government (General)	Weapon type Others	Group name Green Peace
Case 3	Date 1995/03/03	Classification Environment	Attack type Bombing/Explosion
	Target type Private Citizens & Property	Weapon type Explosives/Bombs	Group name Anti-Narita Extremist
Case 4	Date 1980/12/23	Classification Animal	Attack type Unknown
	Target type Business	Weapon type Others	Group name Green Peace
Case 5	Date 1995/03/03	Classification Environment	Attack type Bombing/Explosion
	Target type Private Citizens & Property	Weapon type Explosives/Bombs	Group name Anti-Narita Extremist
Case 6	Date 1995/03/14	Classification Environment	Attack type Bombing/Explosion
	Target type Telecommunication	Weapon type Explosives/Bombs	Group name Anti-Narita Extremist
Case 7	Date 1999/03/08	Classification Environment	Attack type Unknown
	Target type Business	Weapon type Others	Group name Green Peace
Case 8	Date 2000/05/09	Classification Environment	Attack type Unknown
	Target type Government (General)	Weapon type Others	Group name Green Peace
Case 9	Date 2000/07/21	Classification Unsure	Attack type Unknown
	Target type Government (General)	Weapon type Others	Group name Green Peace





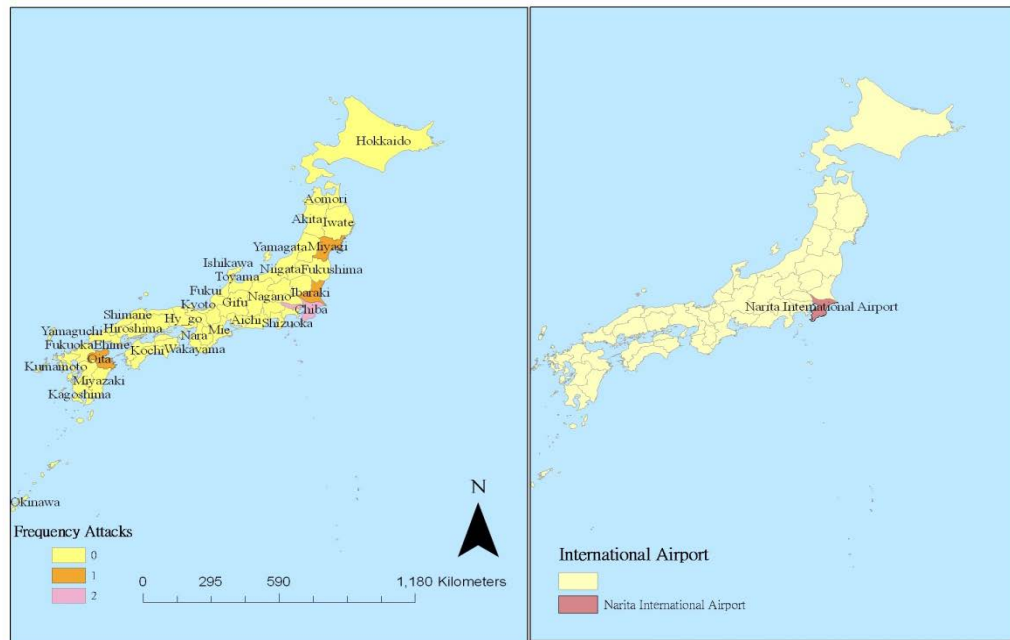
TABLE 3-5. CHARACTERISTICS OF ECO-TERRORISM INCIDENTS IN JAPAN, 1970-2012  
(CONTINUED)

Case	Date	Classification	Attack type
10	2007/02/09	Animal	Bombing/Explosion
	Target type Business/Maritime	Weapon type Chemical	Group name Sea Shepherd
11	2008/01/15	Animal	Armed assault
	Target type Business/Maritime	Weapon type Sabotage Equipment	Group name Sea Shepherd
12	2008/04/16	Animal	Unknow
	Target type Business	Weapon type Others	Group name Green Peace
13	2009/02/07	Animal	Armed assault
	Target type Business/Maritime	Weapon type Sabotage Equipment	Group name Sea Shepherd
14	2010/01/06	Animal	Armed assault
	Target type Business/Maritime	Weapon type Sabotage Equipment	Group name Sea Shepherd
15	2010/02/11	Animal	Bombing/Explosion
	Target type Business/Maritime	Weapon type Chemical	Group name Sea Shepherd
16	2010/09/27	Animal	Facility
	Target type Business/Maritime	Weapon type Others	Group name European conservation organization
17	2012/12/17	Animal	Bombing/Explosion
	Target type Business/Maritime	Weapon type Chemical	Group name Sea Shepherd

The geographic distribution also shows a clustering of incidents around Narita airport (see Figure 3-10). Other attacks focusing on whaling occurred in the ocean and therefore are not shown on this map.



FIGURE 3-10. DISTRIBUTION OF ECO-TERRORIST ATTACKS IN JAPAN



Sources: Data from GTD (2014) and Carson (2012).

Again, we do not find many eco-terrorist incidents in Japan and the number of cases is not sufficient for meaningful quantitative analysis. However, information about these incidents provides a big picture of eco-terrorism that is totally different from what we have observed in the U.S. and Canada. Perhaps, the motivation of eco-terrorism is specific to country or culture, and as such, the one-size-fits-all approach might not be the most effective way to counter eco-terrorism.

Overall, we found much fluctuation in eco-terrorist trends. We notice attack waves and trends inspired by animal rights and environmentalist ideologies. So the next logical step is to identify factors that could drive each trend. Specifically, we want to assess the deterrence effects of legislation and operations that were designed to prevent future eco-terrorist attacks. In order to do so, we need to first identify relevant legislation and litigations. In the next chapter (Chapter 4), we will review important regulations and precedents related to eco-terrorism prevention and present results. The selected legislations and litigations will be used in time series analysis in Chapter 5.



## CHAPTER 4 LEGISLATION RELATED TO ECO-TERRORISM IN THE U.S., CANADA AND JAPAN

In this chapter, we conduct legal analyses focusing on legislation relevant to eco-terrorism. This project presents a potential direction for research in eco-terrorism as it combines an analyses pertaining to the implementation of criminology as well as a legal analysis. Up to now, there have been no books or articles specifically addressing legal issues relating to eco-terrorism, except for Carson (2010).<sup>3</sup> The legal mechanisms responding to eco-terrorism in the U.S., Canada, and Japan are identified through database surveys on LexisNexis,<sup>4</sup> Westlaw,<sup>5</sup> and FindLaw.<sup>6</sup> We also supplemented our data by collaborating with scholars familiar with legal cases in both Canada and Japan. The cross-country comparison of legal mechanisms from different jurisdictions allows us to further discuss the pros and cons of different approaches.

### Countermeasures against Eco-terrorism in the U.S.

Beginning in the late 1990s, the United States federal government started a counter-terrorism campaign especially targeting radical environmental and radical animal rights activists (Jarboe 2002). In the following sections, we review legislation, operations, and litigations related to eco-terrorism. Legal analysis was conducted on legislation and litigations to compare purposes and elements of different legislation and to reveal common legal practices in eco-terrorist cases.

#### Eco-terrorism related Legislation in the United States

##### The Anti-Drug Abuse Act of 1988 (ADA of 1988)

Enacted on the 18<sup>th</sup> November 1988, the ADA of 1988 established the Office of National Drug Control Policy (ONDCP) and targeted sellers and buyers in the drug trade. Though the original purpose of ADA of 1988 has nothing to do with eco-terrorism, the tragic tree-spiking

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<sup>3</sup> Carson (2010) dealt with this issue in her dissertation, but she only focused on three legal bills in the U.S.

<sup>4</sup> LexisNexis is a legal database provider registered in Ohio, USA. <http://www.lexisnexis.com/en-us/products/lexis.page> (accessed May 17th, 2014).

<sup>5</sup> Westlaw is also a legal database provider owned by Thomson Reuters, registered in Minnesota, USA. <http://web2.westlaw.com/signon/default.wl?%5F%5Fmud=y&fn=%5Ftop&newdoor=true&rs=WLW14%2E04&vr=2%2E0> (accessed May 17th, 2014).

<sup>6</sup> FindLaw provides online legal information service and owned by Thomson Reuters, registered in Minnesota, USA. <http://www.findlaw.com> (accessed May 17th, 2014).



incident that occurred around the same time period led to the inclusion of a regulation regarding tree-spiking, a common method used by eco-terrorist groups as their means of attacks (Carson 2013).

*Animal Enterprise Protection Act of 1992 (AEPA of 1992)*

Due to large monetary damages caused by extreme environmental groups, the federal government passed the Animal Enterprise Protection Act of 1992 (AEPA of 1992) to stop the increase in eco-terrorism. As early as the early 1980s, many enterprises that used or marketed animal-derived products in their commercial or professional operations were targeted by radical animal rights groups or individuals. According to a report in 1993 by the Fur Commission, a total of twenty-eight different types of animal enterprises were victimized by animal rights extremists such as university facilities, fur retailers, food production facilities, and medical centers during the period of 1977-1993.

The Animal Enterprise Protection Act of 1992 (AEPA of 1992) was enacted into law on August 26, 1992 and codified as 18 U.S.C. [sec. 43](#). The U.S. Congress passed the AEPA of 1992 in response to those who use violence and other disruptive expressions of extremism under the claims of animal rights protection. If the physical disruption caused by their action results in economic damage exceeding \$10,000, these extreme animal rights activists will be punished by fines or imprisonment for up to one year.

*Animal Enterprise Terrorism Act of 2006 (AETA of 2006)*

The Animal Enterprise Terrorism Act of 2006 (AETA of 2006) is a United States federal law that provided the Department of Justice the authority to apprehend, prosecute, and convict individuals committing animal enterprise terror. This act was passed on November 27, 2006. The statute covers economic damage to animal enterprises, and threats of death and serious bodily harm to associated persons.

The AETA of 2006 was designed to replace its predecessor, the AEPA of 1992, by covering actions such as harassment and threat. Furthermore, AETA of 2006 expands the protected objects to include animal enterprise associated persons and animal enterprise associated companies.



However, lawful expressions of freedom of speech are not prohibited by this law.

#### *USA PATRIOT Act of 2001*

The USA PATRIOT Act was passed by the U.S. Congress on October 26, 2001. The full name of the bill is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. The purpose of this bill is to prevent future terrorist attacks, so it expands the jurisdiction of police agencies to include foreign individuals whom are suspected to be linked to terrorism. For example, law enforcement agencies can search telephone logs, email communications, medical, financial, and other records with the permission of this bill. The USA PATRIOT Act of 2001, sec. 219 also extended the definition of terrorism to include domestic terrorism.

#### *18 U.S.C. sec. 1864 - Hazardous or injurious devices on Federal lands of 1996*

This amended bill dealt with persons whom intend to obstruct the harvesting of timber and cause risk death or bodily injury.

### **Legal Analysis on Legislation in the United States**

Comparing the two critical legislations, AEPA of 1992 and AETA of 2006, it shows that the federal courts rarely adopted the AEPA of 1992 because of its limited scope focusing on animal enterprise. Based on the 18 U.S.C. sec. 43, par. (d) AEPA of 1992, the term “animal enterprise” means “(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing;...(B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; ...or (C) any fair or similar event intended to advance agricultural arts and sciences.” The AETA of 2006 did not change the definition of animal enterprise.

#### *Definition changes on “Offenses”*

However, the term “offense” was extended by 18 U.S.C. sec. 43, par. (a), subpar. (1) & subpar. (2) AETA of 2006. The term “offense” defined in AEPA of 1992 includes the following elements:

Whoever (1) travels in interstate or foreign commerce, or uses or causes to be used the mail or any



facility of interstate or foreign commerce for the purpose of damaging or disrupting an animal enterprise; and (2) intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby causes economic damage exceeding \$10,000 to that enterprise, or conspires to do so; shall be fined under this title or imprisoned not more than one year, or both.

As such, AEPA of 1992 only punishes activities with "purpose of damaging or disrupting of animal enterprises," which means that only intentional damaging or disruptive activities are punished, but conspiracy is not regulated.

In the AETA of 2006, the new subsection (a) further explains the term "offense" as:

Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce (1) for the purpose of damaging or interfering with the operations of an animal enterprise; and (2) in connection with such purpose (A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise; (B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or (C) conspires or attempts to do so; shall be punished as provided for in subsection (b). (

*Changed on the protection scope*

The new AETA of 2006 also further extends scope of protection from animal enterprises to the businesses associated with animal enterprises. The employees of the animal enterprises and their business associates are now also under protection of AETA of 2006. Therefore, the AETA of 2006 widens the protection parameter and covers a broader range of interests of animal enterprises than the AEPA of 1992.

The AETA of 2006 also enhances penalties on those who damage the properties of animal enterprises. The article of penalties includes the following items:

1. Economic damage—any person who, in the course of a violation of subsection (a) causes eco-



conomic damage not exceeding USD \$10,000 shall be fined under this title or imprisoned not more than 1 year, or both.<sup>7</sup>

2. Significant economic damage or economic disruption—any person who, in the course of a violation of subsection (a), causes economic damage or economic disruption exceeding USD \$10,000 but not exceeding USD \$100,000 shall be fined under this title or imprisoned not more than 5 years, or both.<sup>8</sup>
3. Major economic damage or economic disruption—any person who, in the course of a violation of subsection (a), causes economic damage or economic disruption exceeding USD \$100,000 shall be fined under this title or imprisoned not more than 10 years, or both.<sup>9</sup>
4. Significant bodily injury or threats—any person who, in the course of a violation of subsection (a), causes significant bodily injury to another individual or intentionally instills in another the reasonable fear of death or serious bodily injury shall be fined under this title or imprisoned not more than 5 years, or both.<sup>10</sup>
5. Serious bodily injury—any person who, in the course of a violation of subsection (a), causes serious bodily injury to another individual shall be fined under this title or imprisoned not more than 20 years, or both.<sup>11</sup>
6. Death—any person who, in the course of a violation of subsection (a), causes the death of an individual shall be fined under this title and shall be punished by death or imprisoned for life or for any term of years.<sup>12</sup>
7. Conspiracy and attempt—any person who conspires or attempts to commit an offense under subsection (a) shall be subject to the same penalties as those prescribed for the substantive offense.<sup>13</sup>

Although the definition of an offense was extended by the AETA of 2006, both AEPA of 1992

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7 Animal Enterprise Terrorism Act of 2006, subsection (b), para.(1), subpara.(B).

8 *ibid*, subsection (b), para. (2), subpara.(A).

9 *ibid*, subsection (b), para. (4), subpara.(B).

10 *ibid*, subsection (b), para. (2), subpara.(B).

11 Animal Enterprise Terrorism Act of 2006, subsection (b), para. (4),subpara.(A).

12 *ibid*, subsection (b), para. (5).

13 *ibid*, subsection (a), para. (2), subpara. (C).



and AETA of 2006 clearly highlight the main purpose of eco-terrorism, which is to cause damage on property or to disrupt the operation of animal enterprises as demonstrated by the cases noted above.

#### *Summary of the Comparisons*

In sum, both AETA of 2006 and AEPA of 1992 punish the intentional damaging or any activities with the purpose of damaging properties or interrupting the operation of animal enterprises. However, the AETA of 2006 further broadened its definition regarding intentional damaging activities by adding the aspect of “body injury, death, or reasonable fear of person” above and beyond what was previously defined in the AEPA of 1992. Furthermore, conspiracy or an attempt to cause damage or interference on the animal enterprises also counts as one type of offense. Therefore, the scope of protection regarding animal enterprises is extended to cover the earlier “attempt or conspiracy” phase before an attack happens.

#### **Other Relevant Regulations**

The purpose of the above legislation is to protect animal enterprises, the logging industry, and U.S. federal properties. From examining the elements of the AETA of 2006 and AEPA of 1992, we believe that the legislation represents an unfair protection status favoring animal enterprises over animal rights protection. In the U.S., other federal regulations related to animal protection are shown in the following chart.





TABLE 4-1. THE FEDERAL REGULATIONS RELATED TO ANIMAL PROTECTION IN THE U.S.

	TITLE	CITATION	AUTHORIZED AGENCY	YEAR
1	Adoption of Military Animals	10 U.S.C. § 2583	Department of Defense	2000
2	African Elephant Conservation Act,	16 U.S.C. §§ 4201-4245	Secretary of the Interior	1989
3	Agriculture Appropriations Act, 2006, P.L. 109-97 (2005), and subsequent appropriations acts	Section 794 of P.L. 109-97 (2005)	Department of Agriculture	2005
4	Airborne Hunting Act	16 U.S.C. § 742j-1		1972
5	Alaska National Interest Lands Conservation Act	Sections 1313-1314 of this act, 16 U.S.C. §§ 3201-3202	Secretary of the Interior	1980
6	Americans with Disabilities Act	42 U.S.C. §§ 12101-12213		1990
7	Rehabilitation Act of 1973	29 U.S.C. §§ 791-794		1973
8	Anadromous Fish Conservation Act	16 U.S.C. §§ 757a-757f.	Secretary of Commerce	1965
9	Animal Damage Control Act	7 U.S.C. §§ 426-426c	Secretary of Agriculture	1931
10	Animal Disease Risk Assessment, Prevention, and Control Act of 2001, P.L. 107-9 (2001)		Department of Agriculture	2001
11	Animal Enterprise Protection Act, 1992	18 U.S.C. § 43		1992
12	Animal Health Protection Act	7 U.S.C. §§ 8301-8321	Secretary of Agriculture	2002
13	Animal Welfare Act	7 U.S.C. §§ 2131-2159	Secretary of Agriculture	1987
14	Animal Fighting	7 U.S.C. § 2156, 18 U.S.C. § 49		2012
15	Antarctic Conservation Act of 1978	16 U.S.C. §§ 2401-2412	National Science Foundation	1978
16	Antarctic Marine Living Resources Convention Act of 1984	16 U.S.C. §§ 2431-2444		1984
17	Asian Elephant Conservation Act of 1997	16 U.S.C. §§ 4261-4266	Secretary of the Interior	1997
18	Atlantic Coastal Fisheries Cooperative Management Act	16 U.S.C. §§ 5101-5108	Secretary of Commerce, Secretary of the Interior, Atlantic States Marine Fisheries Commission	1993
19	Atlantic Salmon Convention Act of 1982	16 U.S.C. §§ 3601-3608.		1982
20	Atlantic Striped Bass Conservation Act	16 U.S.C. §§ 5151-5158	Secretary of Commerce and the Secretary of the Interior Atlantic States Marine Fisheries Commission	1984



TABLE 4-1. THE FEDERAL REGULATIONS RELATED TO ANIMAL PROTECTION IN THE U.S.  
(CONTINUED)

	TITLE	CITATION	AUTHORIZED AGENCY	YEAR
21	Atlantic Tunas Convention Act of 1975	16 U.S.C. §§ 971-971k	Secretary of Commerce	1975
22	Bald and Golden Eagle Protection Act	16 U.S.C. §§ 668-668d	Secretary of the Interior	1940
23	Captive Wildlife Safety Act: See Lacey Act Amendments of 1981			1981
24	Chimpanzee Health Improvement, Maintenance, and Protection Act	42 U.S.C. § 287a-3a	Secretary of Health and Human Services	2000
25	Commercial Transportation of Equine for Slaughter	7 U.S.C. § 1901 note	Secretary of Agriculture	2011
26	Department of Defense Appropriations Acts		Department of Defense	2013
27	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for the Fiscal Year Ending September 30, 1993		Departments of Labor Health and Human Services Department of Education National Institutes of Health	1993
28	Depictions of Animal Cruelty	18 U.S.C. § 48		2010
29	Dingell-Johnson Sport Fish Restoration Act	16 U.S.C. §§ 777-777I	Secretary of the Interior	1950
30	Disposition of Unfit Horses And Mules	40 U.S.C. § 1308		2012
31	Dog and Cat Protection Act of 2000	19 U.S.C. § 1308		2000
32	Dolphin Protection Consumer Information Act	16 U.S.C. § 1385		2012
33	Driftnet Impact Monitoring, Assessment, and Control Act of 1987	16 U.S.C. § 1822 note		1987
34	Eastern Pacific Tuna Licensing Act of 1984	16 U.S.C. §§ 972-972h		1984
35	Endangered Species Act	16 U.S.C. §§ 1531-1544 .	Secretary of the Interior	1973
36	Fair Housing Act	42 U.S.C. § 3604	Department of Housing and Urban Development	1988
37	Federal Hazardous Substances Act	15 U.S.C. §§ 1261-1275	The Consumer Product Safety Commission	1960
38	Federal Law Enforcement Animal Protection Act of 2000	18 U.S.C. § 1368		2000
39	Fish and Wildlife Conservation Act	16 U.S.C. §§ 2901-2912; §§ 661-667d	Secretary of the Interior	1980

TABLE 4-1. THE FEDERAL REGULATIONS RELATED TO ANIMAL PROTECTION IN THE U.S.  
(CONTINUED)

	TITLE	CITATION	AUTHORIZED AGENCY	YEAR
40	Fishery Conservation Amendments of 1990, P.L. 101-627			1990
41	Food, Agriculture, Conservation, and Trade Act of 1990	7 U.S.C. § 5801(a)(5)		1990
42	Fur Seal Act of 1966	16 U.S.C. §§ 1151-1175	Secretary of Commerce	1966
43	Great Ape Conservation Act of 2000	16 U.S.C. §§ 6301-6305	Secretary of the Interior	2000
44	High Seas Fishing Compliance Act of 1995	16 U.S.C. §§ 5501-5509		1995
45	Horse Protection Act	15 U.S.C. §§ 1821-1831	Secretary of Agriculture	1970
46	Humane Slaughter Act	7 U.S.C. §§ 1901-1906	Secretary of Agriculture	1978
47	ICCVAM Authorization Act of 2000	42 U.S.C. §§ 285I - 285I-6	Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM)	2000
48	International Dolphin Conservation Act of 1992	P.L. 102-523 ..		1992
49	International Dolphin Conservation Program Act	P.L. 105-42 (1997)		1997
50	Lacey Act	18 U.S.C. §§ 41-48		1900/2008
51	Lacey Act Amendments of 1981	16 U.S.C. §§ 3371-3378		1981
52	Magnuson-Stevens Fishery Conservation and Management Act	16 U.S.C. §§ 1801-1891d		1976
53	Marine Mammal Protection Act of 1972	16 U.S.C. §§ 1361-1423h	Marine Mammal Commission	1972
54	Marine Plastic Pollution Research and Control Act of 1987	P.L. 100-220, Title II	Environmental Protection Agency	1987
55	Marine Protection, Research, And Sanctuaries Act of 1972	16 U.S.C. §§ 1431-1445b	Secretary of Commerce	1972
56	Marine Turtle Conservation Act of 2004	16 U.S.C. §§ 6601-6607		2004
57	Migratory Bird Conservation Act	16 U.S.C. §§ 715-715s	Secretary of the Interior	1929/ 1972
58	Multinational Species Conservation Fund	16 U.S.C. § 4246		2014
59	National Agricultural Research, Extension, and Teaching Policy Act of 1977	7 U.S.C. §§ 3191-3202	Secretary of Agriculture	1977



TABLE 4-1. THE FEDERAL REGULATIONS RELATED TO ANIMAL PROTECTION IN THE U.S.  
(CONTINUED)

	TITLE	CITATION	AUTHORIZED AGENCY	YEAR
60	National Fish and Wildlife Foundation Establishment Act	16 U.S.C. §§ 3701-3710		2002
61	National Housing Act	12 U.S.C. § 1701r-1	Secretary of Housing and Urban Development Secretary of Agriculture	1983
62	National Wildlife Refuge System Administration Act of 1966	16 U.S.C. §§ 668dd-668ee	Secretary of the Interior	1966
63	Neotropical Migratory Bird Conservation Act	16 U.S.C. §§ 6101-6109		2000
64	Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990	16 U.S.C. §§ 4701-4751		1990
65	North Pacific Anadromous Stocks Act of 1992	16 U.S.C. §§ 5001-5012.		1992
66	Northern Pacific Halibut Act of 1982	16 U.S.C. §§ 773-773k	Secretary of Commerce	1982
67	Northwest Atlantic Fisheries Convention Act of 1995	16 U.S.C. §§ 5601-5612		1995
68	Pacific Salmon Treaty Act of 1985	16 U.S.C. §§ 3631-3645		1985
69	Pacific Whiting Act of 2006	16 U.S.C. §§ 7001-7010		2006
70	Partnerships for Wildlife Act	16 U.S.C. §§ 3741-3744		1992
71	Pets Evacuation and Transportation Standards Act of 2006	42 U.S.C. §§ 5170b(a)(3)(J), 5196(e)(4), 5196(j)(2), 5196b(g)	Federal Emergency Management Agency (FEMA)	2006
72	Pittman-Robertson Wildlife Restoration Act	16 U.S.C. §§ 669-669k	Secretary of the Interior	1937
73	Public Health Service Act	42 U.S.C. §§ 283e, 289d	National Institutes of Health Secretary of Health and Human Services	1944
74	Recreational Hunting Safety and Preservation Act of 1994	16 U.S.C. §§ 5201-5207		1994
75	Rehabilitation Act of 1973			1973
76	Rhinoceros and Tiger Conservation Act of 1994	16 U.S.C. §§ 5301-5306		1994
77	Salmon and Steelhead Conservation and Enhancement Act of 1980	16 U.S.C. §§ 3301-3345		1980
78	Shark Finning Prohibition Act	16 U.S.C. § 1822 note		2000



TABLE 4-1. THE FEDERAL REGULATIONS RELATED TO ANIMAL PROTECTION IN THE U.S.  
(CONTINUED)

	TITLE	CITATION	AUTHORIZED AGENCY	YEAR
79	Sikes Act	16 U.S.C. §§ 670a-670o	Secretary of Defense	1960
80	South Pacific Tuna Act of 1988	16 U.S.C. §§ 973-973r		1988
81	Tariff Act of 1930	19 U.S.C. § 1527		1930
82	Tuna Conventions Act of 1950	16 U.S.C. §§ 951-962	Secretary of Commerce	1950
83	Twenty-Eight Hour Law	49 U.S.C. § 80502		2013
84	United States Housing Act of 1937			1937
85	United States-Russia Polar Bear Conservation and Management Act of 2006	16 U.S.C. §§ 1423-1423h	Secretary of the Interior	2006
86	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century	49 U.S.C. § 41721	Secretary of Transportation	2006
87	Western and Central Pacific Fisheries Convention Implementation Act	16 U.S.C. §§ 6901-6910		2011
88	Whale Conservation And Protection Study Act	16 U.S.C. §§ 917-917d	Secretary of Commerce	2011
89	Whaling Convention Act of 1949	16 U.S.C. §§ 916-916l		1949
90	Wild Bird Conservation Act of 1992	16 U.S.C. §§ 4901-4916		1992
91	Wild Free-Roaming Horses and Burros Act	16 U.S.C. §§ 1331-1340		1971
92	Wildlife and Sport Fish Restoration Programs Improvement Act of 2000	16 U.S.C. §§ 669-669k		2000
93	Yukon River Salmon Act of 1995	16 U.S.C. §§ 5701-5709		1995
94	Animal Enterprise Terrorism Act	18 U.S.C. § 43		2006

Sources: Henry Cohen, Brief Summaries of Federal Animal Protection Statues, April 20, 2009, Congressional Research Service (2009).<sup>14</sup>

Most of the federal regulations in this table refer to the protection or conservation of wildlife and endangered species. The legal protection on economic animals, farm animals, animals for experimentation, and pets is very hard to find in US legislation. In recent years, most of the eco-terrorism activities in the U.S. targeted animal enterprises or related institutions. Possibly, the lack

<sup>14</sup> Available at [http://www.animallaw.info/articles/art\\_pdf/aruscohen2009fedlawsummaries.pdf](http://www.animallaw.info/articles/art_pdf/aruscohen2009fedlawsummaries.pdf) (last reviewed date 18th March 2014)



of power and resources of animal protection groups relative to those of animal enterprises leads to disproportional protection favoring animal enterprises. As such, the lack of animal rights protection might be one reason driving the attacks of the animal right groups or individual against these companies.

### **Law Enforcement Operation**

In addition to changes in legislation, there are also programs designed to respond to specific threats. For example, it has been fifteen years since a group known as the Family torched a ski resort in Vail, Colorado, and causing \$26 million in damage (Federal Bureau of Investigation 2008). As a result, the FBI launched Operation Backfire to combat the activities of the Family around 1998. Based on our data, starting from 2004, this project has captured many members of the Family and successfully reduced the number of attacks by this group. This could imply that the FBI operation has real impact on bringing eco-terrorists to justice.

Between 1993 and 2003, the FBI commissioners of eco-terrorism prevention grew by approximately 224 percent in order to strengthen their abilities to prevent eco-terrorism. The FBI also collaborates with local law enforcement agencies to integrate resources so they can be more effective in responding to the threats of eco-terrorism. Consequently, the FBI has made a number of arrests of individuals in eco-terrorist cases. For example, Mark Warren Sands was arrested on June 14, 2001 for extortion and arson (Jarboe 2002).

### *Eco-terrorism related Litigation in the United States*

In this project, we selected cases in which either radical environmental protection-identified individuals or groups were charged and sentenced by the U.S. courts. One aspect worth mentioning is that the number of attacks recorded in our quantitative database is different from the number of cases sentenced by the courts due to the nature of legal procedure. For example, some attacks committed by the same actor or members of an organization will be consolidated into one trial and consequentially merged as one case.

We found two cases that were charged with the Anti-tree Spiking Act of 1988, three cases



that were charged with State Criminal law, one case that was charged with federal laws, one civil case, one case charged with AEPA of 1992, and one case charged with AETA of 2006. From the tallies, we can tell that special laws, such as the AEPA of 1992 and the AETA of 2006, were only adopted in a very few cases. The cases and details are listed below.

*Anti-tree spiking Act, 18 U.S.C sec.1864 (Hazardous or injurious devices on Federal lands of 1988)*

United States v. John P. Blount (1989)

The Defendant, John P. Blount, was charged of violating 18 U.S.C sec. 1864 and sec.1361—"Hazardous or injurious devices on Federal lands of 1988"—because he put 384 metal nails (each weighing 500 pounds) on 284 trees in the Clearwater National Forest, Idaho on March 29, 1989. The national forest is governed under the jurisdiction of the U.S. Federal government and the trees are also property of the U.S. government. The final verdict handed down by the United States Court of Appeals, Ninth Circuit in Washington State affirmed the defendant was guilty. The court confirmed that the defendant had intent to injure the value of the trees, which constitutes the element of the "willful injury against property of federal government" and the illegal tree spikes reduced the harvest value of the forest wood.

One of the key regulations—"The Hazardous or injurious devices on Federal lands Act (Anti-tree Spiking Act)—was passed by the US Congress in 1988. The *United States v. John P. Blount* (1989) is the first and only case for the court to define spiking activities as constituted by the elements of "the intent to obstacle or harass the harvesting timber" and confirmed the nails on the spiked trees on federal lands are "hazardous or injurious device(s)". An individual who has the intention to cause damage to the harvest value of the trees on federal lands is committing intentional injury to federal government property. Therefore, using the spikes decreased the economic value of the trees. According to the 18 U.S. C. sec.1864 subsection (b), the violator "shall be fined or imprisoned for not more than 20 years, or both,...(c) if damage to the property of any individual results or if avoidance costs have been incurred exceeding \$10,000, in the aggregate." We believe this case relays symbolic meaning on subsequent tree-spiking activities and shifts the emphasis of protection toward the federal properties, especially trees.



United States v. Joel Andrew Wyatt, aka “Lupine”; Rebecca Kay Smith (2005)

The defendants, Wyatt and Smith, are members of Earth First!. They established a platform between two trees with polypropylene ropes at the Bitterroot National Forest in Montana State and performed their “tree sitting” to obstruct timber harvesting for four weeks from July 8 to August 6, 2002. The placement of the platform was intended to impact emergency medical and logging helicopters by endangering landing and take-off. The court affirmed the usage of ropes by the defendants was an intentional hazardous behavior to harass timber harvesting, and was determined a “hazardous or injuries device” as specified in 18 U.S.C. sec. 1864, par. (d), subpar. (3). The obstructive behavior also negatively impacted federal properties.

*Animal Enterprise Protection Act of 1992 (AEPA of 1992)*

United States v. Stop Huntingdon Animal Cruelty Inc., etc. (2007)

On March 2, 2006, the defendant and six of its members were convicted of terrorism and Internet stalking under the AEPA of 1992. The defendants were charged with engaging in various forms of harassment and intimidation associated with Huntingdon Life Sciences for the purpose of stopping animal testing. The defendants were also convicted of conspiracy that violates the AEPA of 1992. All six activists were convicted and sentenced to four to six years of imprisonment. The Appeals Court affirmed and the Federal Supreme Court denied certiorari on the 7<sup>th</sup> March 2011.

*The Animal Enterprise Terrorism Act of 2006, 18 U.S.C. sec.43, par. (a)*

United States v. William James Viehl (2010)

On August 19, 2008, the defendant William James Viehl was charged with damaging and interfering with the operation of the McMullin mink farm located in Southern Jordan and Kaysville, Utah. Specifically, he set over 500 minks free from cages and also destroyed animal pedigree cards in the farm offices. The court confirmed that the defendant’s behavior constituted elements of the 18 U.S.C. sec. 43, par. (a) of AETA of 2006 because he trespassed onto two farms and intentionally caused damage to the operations of the farms.





## **Legal Analysis of Litigations in the United States**

The litigations reviewed above not only present the interpretation of the law and incidents made by the judges/courts in different levels but also reveal the judicial opinions on the specific legislation applied in the cases. As aforementioned, the U.S. Courts rarely apply the AEPA of 1992 to the activities of eco-terrorists or their organizations. The cases subject to the Anti-tree Spiking Act of 1988 are not only rare but also limited to those events that occurred in federal lands. For the tree-spiking events happening within private properties, only general state laws of tortious interference (e.g., *Highland Enterprises, Inc. v. Billy Jo Barker* 1999; *Huffman and Wright Logging Co. v. Valeri J. Wade* 1991) or contract (*United States v. Katherine Christianson* 2009) were adopted. In sum, most of the cases that qualified for eco-terrorism concepts were not charged with federal regulations but with general state criminal charges, such as arson, harassment, and intimidation (*Teva Pharmaceuticals USA, Inc v. Stop Huntingdon Animal Cruelty USA* 2009). It shows that the judicial and legislative branches at the state level do not share the federal government's enthusiasm on chasing terrorism. Instead they follow a more conventional avenue relying on general state laws to deal with these radical activities on animal rights and environment protection.

The choice of charges on these cases perhaps reflects an underlying view on whether eco-terrorism incidents should be treated just like other terrorist incidents? Compared to conventional terrorism that focuses more on causing fatalities and instilling harm onto and fear in people, these extreme radical environmentalists and extreme animal rights activists rarely caused casualties. Lacking the lethal and harmful elements of terrorism, the power provided by the USA PATRIOT Act of 2001 should not be applied to domestic actors or organizations driven to protect the environment.

Moreover, we found that most cases were processed under criminal charges and tortious interferences. We believe the enhancement on penalties and damage compensation as regulated by the AETA of 2006 is sufficient and could balance the economic suffering of animal enterprises or governments.



By labeling the actions of these radical environmental groups or individuals as terrorism, they did not create any new category of criminal activities or damages to the victims or owners. Rather, these “eco-terrorists” should be protected by the fundamental human rights given to every criminal instead of being targeted by tactics used to combat foreign terrorism. Furthermore, these extreme radical environmentalists and animal rights activists should not be called terrorists. The title of the AETA of 2006 should also be changed without the term “terrorism.” It is unjust and unfair to treat these domestic environmentalist groups as terrorists.

Additionally, our review of animal and wildlife protection regulations reveals that most of the animal protection legislation focuses on wildlife and natural resource conservation. As such, these regulations neglect an important focal concern of radical animal protection groups, that is, to prohibit the sales of economic animals and animal testing. None of the existing ninety-three statutes is able to address this particular concern. Table 4-1 above shows a lack of protection regarding the testing of animals and of regulation that limits animal testing enterprises. Because the law seems to ignore these interests, extreme environmentalists or animal rights groups could be seen as justified to continue direct actions against those animal-testing enterprises. Therefore, a new proposal to regulate and provide standards for those research enterprises promoting animal rights for testing animals might be a solution to reduce conflict in the future.

### **Countermeasures against Eco-terrorism in Canada and Japan**

From the descriptive analysis presented in the previous chapter, it is clear that the prevalence rates and patterns of eco-terrorism in Canada and Japan are quite different from that of the United States. As such, we expect that legal responses to eco-terrorism from these two countries to be different than the U.S. regulations as well. Below we review and discuss legislation and important legal cases in Canada and Japan.



## **Eco-terrorism related Legislation in Canada**

The Canada Anti-Terrorist Act of 2001 was aimed at violent activities prohibited by international treaties, such as the Convention for the Suppression of Unlawful Seizure of Aircraft of 1971, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 1971, and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons of 1973. Similar to the United States, the definition of terrorism given under the Canada Criminal Code of 1985, sec. 83, is aimed at violent activities that cause death or harm to people. So far, Canada does not have a legislative proposal to protect animal enterprises or take special measures to prohibit activities of extreme environmental institutions or organizations.

The followings are the regulations related to the animal protections.

### *Canada Criminal Code of 1985*

Of the Criminal Code of Canada passed in 1985, the provisions relating to terrorism include sec.83.02 to sec.83.04 which regards the financing of terrorism, and sec. 83.18 to sec. 83.23 which regards the acts of participating, facilitating, instructing and harboring terrorism. On the other hand, this bill also develops regulations related to animal protection (see sec.445-1) that prevents animal cruelty. This bill also provides mechanisms to help mistreated animals and to hold pet owners accountable for their actions.

### *Health of Animal Act of 1990, sec. 64, par. (1)*

This act focuses on farm-to-slaughter traceability of livestock and poultry species. The purpose of this act is to provide a response mechanism that rapidly responds to disease outbreaks and natural disasters that affect Canada's animal resource base.

### *Migratory Birds Convention Act of 1994*

This Act aims to protect migratory birds by regulating potentially harmful human activities, including bird hunting, or other harmful activities related to migratory birds.

Overall, the Canada Criminal Code of 1985 and some provincial laws provide animal pro-



tection but do not include animal rights and animal experimentation. Lacking legal support on animal rights protection in Canada leads to the same condition that possibly motivates eco-terrorism in the U.S.

*Eco-terrorism related Litigation in Canada*

Similar to what we have observed in the U.S., the following cases also show the tendency of the judicial branch to use traditional criminal charges to deal with the illegal interference of radicals on animal testing institutions. The following are legal cases related to the definition of eco-terrorism in Canada's legal database.

United States of America and Barbarash (2002)

David Barbarash is a Canadian living in Vancouver. During an arson and burglary investigation committed by members of the ALF in the U.S., the FBI found that David Barbarash was one of the suspects. As such, the FBI motioned to the court in British Columbia, Canada to grant a search warrant. The Supreme Court of British Columbia at first granted and issued a warrant but later denied three requests on December 11, 2002.

This case is not a typical eco-terrorist incident because it did not occur in the territory of Canada. Rather, it is considered a mutual judicial assistance case. However, this case reveals the frequent exchange and close connectivity among extreme environmental groups within the U.S. and Canada. Bilateral cooperation and recognition between law enforcement agencies will help achieve stronger deterrents to extreme environmental events.

R. v. Thurston (1994)

The defendant, Darren Todd Thurston, a member of the ALF, was charged with criminal conspiracy for an attack on the University of Alberta Bio Animal Kennel in Edmonton where he released twenty-nine cats intended for medical experiments. The final verdict from the Court of Appeal of Alberta sentenced the defendant to fifteen months imprisonment and a compensatory fine of \$75,732 (Canadian funds).

The number of eco-terrorism attacks in Canada is far less common than in the United States.



Consequently, there are even fewer eco-terrorist cases that were brought to court. Interestingly, we found a case in which the defendant, a Canadian, was tried as a member of an organization based in the U.S. This demonstrates the intertwined situation on eco-terrorist attacks between Canada and America. Moreover, the concept of eco-terrorism is not commonly used in Canada as it is in the U.S.. Within the Canadian legal system, it does not treat cases against institutions or companies who test on animals differently from regular criminal cases. Therefore, the term eco-terrorism is loosely used in general but has not become a legal norm yet.

### **Eco-terrorism related Legislation in Japan**

Japan does not have eco-terrorism regulation on the table at this moment. The only anti-terrorism regulation was made in 2001 after the 9/11 attacks in the U.S. Japan passed the Specific Measure Act on Countermeasure of Terrorism of 2001 for the purpose of providing necessary support to the U.S. military in combating terrorism and eliminating threats outside of Japan. Nonetheless, the Japanese government does not maintain a watch list of terrorists comparable to the USA PATRIOT Act of 2001. Japan faces different kinds of challenges from anti-whaling and dolphin protection groups in recent years. To defend their whaling tradition, the Japanese government has presented five reasons to dismiss criticisms for whaling: First, whales eat too much fish so whales need to be properly controlled by whaling activity. Second, there are a large number of whales and the whale population is still growing. Third, whaling is based on traditional, cultural, and nutritional reasons. Fourth, anti-whaling countries continue to impede the implementation of the Revised Management Procedure<sup>15</sup> under the International Whaling Committee (IWC). Finally, whalers have learned in the past that overfishing resulted in reducing the number of whales to near extinction.

On the other hand, Japan developed laws to protect animals—specifically, the Act on Welfare and Management of Animals of 1973. This act prohibits the mistreatment of animals and provides content and management for animal welfare, but does not cover animal rights protection regarding experiments.

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<sup>15</sup> International Whaling Commission (IWC). Revised Management Scheme. <http://iwc.int/rmp>



### *Eco-terrorism Litigation in Japan*

Early eco-terrorism activity began in Japan in the 1970s. Although Japan does not officially define eco-terrorism in its legal system, the incidents aimed at stopping whale hunting should be considered as eco-terrorism activities. The common perpetrators launching eco-terrorist attacks in Japan tend to belong to the following two groups: Greenpeace (GP) and Sea Shepherd. The following cases are organized by each group.

#### Cases related to Greenpeace

TABLE 4-2. CASES ATTRIBUTED TO GREENPEACE

	SENTENCED DATE	CASE SUMMARY
1	1978/12/19	A GP member waved the banner on Tokyo Tower to protest against the International Whaling Commission (IWC) General Meeting. (A member was arrested and charged with illegal intruding)
2	1980/12/23	To protest against dolphin killing, a GP member damaged to nets and released 150 dolphins in Shizuoka. (A member was arrested and charged with Operation disturbance with violence 、 damage of property)
3	1999/3/8	Three GP members waved the banner on the 8 <sup>th</sup> Floor of Tokyo Big Sight to protest against the threat of toxic toys during the International Tokyo Toys Show in 1999. (Three members were arrested and charged with illegal intruding)
4	2000/5/9	Four GP members waved the banner to protest against dioxin contamination in Tokyo. (Four members from UK, Hong Kong, Belgium, and Netherlands were arrested and charged with illegal intruding)
5	2000/7/21	Four GP members took a raft out on the controlled area to protest against the G8 summit in Okinawa. (Four members were arrested and charged with misdemeanor)
6	2008/4/16	GP activists, Junichi Sato and Toru Suzuki, were arrested on suspicion of stealing a consignment of whale meat. (Two members were arrested and charged with “theft and “trespass”) (Appendix C) <sup>1</sup>

Source: summary from Hamano Takashi (浜野 喬士) “エコ・テロリズム—過激化する環境運動とアメリカの内なるテロ”(2009)

#### The Sea Shepherd

##### The Shonan Maru No. 2 case

The defendant was Peter Bethune, a New Zealander and captain of the Andy Gil boat. The Andy Gil was rammed and damaged by the Japanese whaling ship Shonan Maru No. 2 on January 6, 2010 in the Antarctic Ocean. On February 15, 2010, he boarded Shonan Maru No.2 by Jet



Ski without permission and asked the Japanese government to take full responsibility for the damage. He was later arrested and charged with trespassing, vandalism, possession of a knife, obstructing business, and assault. On July 7, 2010, he plead guilty to all of the charges against him except assault. The final verdict was two years imprisonment with five years' probation. Peter Bethune was also deported back to New Zealand on July 9, 2010 (See Appendix D).

As discussed earlier, the nature of eco-terrorism in Japan shows an interesting pattern. The most common eco-terrorism cases are whaling related. Unlike eco-terrorism in the U.S. and Canada, most of the defendants are foreigners rather than native Japanese. In a sense, it shows the clashes between cultures. We cannot find a domestic regulation that prohibits whale or dolphin hunting. Whether this is a cultural conflict or wildlife preservation issue, Japanese society remains silent on this topic. This is manifested in the lack of domestic legislation and litigations on whale and dolphin protection. This is especially obvious compared to other environmental issues such as the protest against the Narita airport project. In any case, the prevalence rate of eco-terrorism is relatively low in Japan and consequently, it is unnecessary for the government to propose any new control regulation on the phenomenon. On the other hand, the Japanese government can easily apply its Antiterrorism Special Measures Law of 2001 to foreign radical environmentalists or organizations to prevent future attacks on its citizens or properties. However, this does not seem to be the approach taken by the Japanese government. Rather, criminal infractions are most commonly used to handle eco-terrorism threats in Japan.

On March 31, 2014, The International Court of Justice (ICJ) ruled in *Australia v. Japan: New Zealand intervening, Whaling in Antarctic* (2014) and sentenced that Japan's whale hunting is not based on a scientific approach and thus, the nation should stop hunting whales off Antarctica. Japan agreed to abide by the ruling from the ICJ and stop whaling in Antarctica Ocean. However, the whale hunting in the northern Pacific Ocean continues. It is foreseeable that the anti-whaling eco-terrorist attacks will continue until Japan decides to change their whaling practices.

Regardless of the country's preference of adopting special laws or general criminal codes in dealing with eco-terrorist cases, the ultimate goal of law is to deter crime from happening. As



such, we examine the deterrence effects of critical laws on eco-terrorism trends across countries. After reviewing eco-terrorism related legislation and litigation in this chapter, we have selected some key legislation and cases to be tested in the following chapter using time series methods.

## **CHAPTER 5 EXAMINING THE DETERRENCE EFFECTS OF KEY LEGISLATIONS ON ECO-TERRORISM**

### **Time Series**

Based on our research questions, we use time series method to understand the trends and changes in eco-terrorism attacks. Time series concerns the analysis of data collected over time; it can use weekly values, monthly values, quarterly values, or annual values. Time series analysis has several characteristics. First, it can help identify the number of changes over time. Second, it can examine the influence of one or more interventions within the whole time series. Last, it can be used to predict future trends (Tabachnick and Fidell 2001, 837). This study chose to use interrupted time series analysis as the first method to evaluate the effects of legal interventions on subsequent eco-terrorism.

In this study, we measure the annual and monthly intervention effects using an Autoregressive Integrated Moving Average (ARIMA) model to see which legislations and high profile litigations have achieved the intended deterrence effects. Based on legal analyses conducted in the previous chapter, we selected some key legal actions for examination.

The full model can be demonstrated in Equation (1) (Wagner et al. 2002).

$$\hat{Y}_t = \beta_0 + \beta_1 * timet + \beta_2 * intervention_t + \beta_3 * x time\_after\_intervention_t + e_t \quad (1)$$

The ARIMA model has three structural parameters (p=autoregression, d=integration, and q=moving average). Essentially, the ARIMA model combines the autoregressive (AR) function, the integrated (I) function, and the moving average (MA) function in the estimation. Before running the analysis, we first examined the unit root property of the trend and determined our data to be trend stationary. To examine the effect of interventions, we apply an ARIMA(1,0,0), an



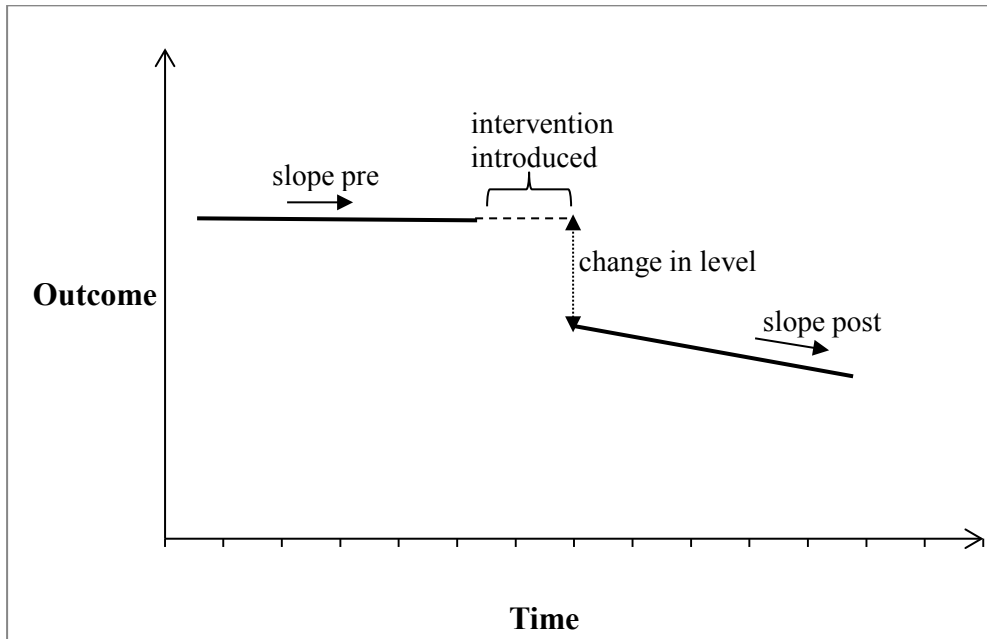


interrupted time series model to the data.<sup>16</sup> This model can be written as Equation (2).

$$Y_t = \Phi Y_{t-1} + e_t \quad (2)$$

An interrupted time series analysis is also considered as a segmented regression analysis. It takes into account trends and autocorrelations among the observations to estimate the effects that can be attributed to interventions. The logic goes as following: if an intervention has an impact, then we expect to have a different slope after the intervention (see Figure 5-1). In other words, we want to detect whether the intervention has an effect significantly better (or different) than the underlying secular trend.

FIGURE 5-1 CHANGES IN OUTCOME MEASURE BEFORE AND AFTER THE INTERVENTION



Source: Data from Ramsay (2003)

### Outcome Variables

In our analysis, we examine the intervention effects of legislation and key litigation on a number of eco-terrorist attacks. We believe that intervention with a specific focus will be more effective on activities that are inspired by the same cause. For instance, legislation focusing on animal enterprise protection should have more effects on animal protection activities than on activities driven by environmental protection. As such, we separated different types of attacks

<sup>16</sup> The determination of the ARIMA parameter is based on the prior evaluation of the data. Unit Root tests were conducted to examine whether the trend is stationary.



in our analyses. The outcome measures used in time-series analysis are number of total attacks, number of animal-related attacks, and number of environment-related attacks.

### *Interventions*

As mentioned earlier, key legislation and litigation are interventions tested in the models. As for analysis on U.S. data, we include the ADA of 1988, the AEPA of 1992, the USA PATRIOT Act of 2001, and the AETA of 2006 as well as one case of litigation. As for Canada, three legal acts, the Canada Criminal Code of 1985, the Health of Animals Act of 1990, sec. 64, par. (1), and the Migratory Birds Convention Act of 1994 as well as the *United States of America and Barbarash* (2002) case were examined. With respect to Japan, due to the limited number of cases, we did not perform quantitative analysis. In sum, to examine the effects of intervention, we created dummy variables to represent the time period when the legislation was in effect, where 1= the presence of legislation and 0=its absence. The analysis results show whether each intervention changes the trend of eco-terrorism before and after the intervention.

### **Series Hazard Model**

Another method we used to test the intervention effects was the Series Hazard Model (SHM). SHM has been used frequently in terrorism research in recent years. For example, Dugan et al. (2005) applied the modeling approach to examine the effects of the implementation of metal detectors on aerial hijacking incidents. Carson (2013) also examines the risk of new eco-terrorist attacks after the implementation of the selected legislation using SHM.<sup>17</sup> Contrasted with ARI-MA, SHM is an event-based approach and allows for testing effect of multiple interventions at the same time (Dugan 2011; Carson 2013). As such, it helps control time stable and time varying effects of multiple interventions simultaneously. SHM also examines whether any particular intervention changes hazards of the occurrence of new attacks. Moreover, time series analysis has been criticized for its lack of emphasis on contextual effects between events and only accounting for temporal dependence (Dugan 2009, 5). As such, we employ both methods in our study to

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<sup>17</sup> Due to similarity in data and research interest, our data and intervention measures are quite similar to what were used in Carson (2013). However, we have extended the data collection period and included more critical legal measures in our analysis. Furthermore, we have incorporated cross-country comparisons and legal analysis results in the current study and therefore, we believe that this study extends our understanding of eco-terrorism in many ways and could bring new insights to scholars who are interested in eco-terrorism.



address different research questions.

The basic equation of the SHM can be written as Equation (3).

$$\lambda_e(t | \mathbf{X}_e) = \lambda_0(t) \exp(\mathbf{X}_e \boldsymbol{\beta}) \quad (3)$$

#### *Dependent Measure*

The dependent measure for the series hazard model captures number of days until next attack. When two or more attacks happened on the same day, we might have the same value for the dependent variable; this is referred to as tied data. Hence, our dependent variables which equal zero were recoded to have the same value as the last event listed on their days (Dugan and Yang 2012, 138).

#### *Independent Variables*

Since the series hazard model can incorporate multiple interventions into the same model, we included the same sets of legislation tested in the time series section simultaneously. In terms of control variables, we followed what was used in Dugan and colleagues (2005), LaFree et al. (2009), and Carson (2013), and incorporated independent variables measuring last incident attempt (number of days since the last incident), success density (proportion of current and two previous incidents that were successful over the number of months spanning the three events), along with monthly count (controls for any trend in the overall hazard of events over time) in the series hazard model. All these control variables are found (or believed) to have effects on the likelihood of new attacks. For example, Dugan and Yang (2012) pointed out that when there was a higher concentration of recent successful attacks, the hazard of another attack will probably increase.

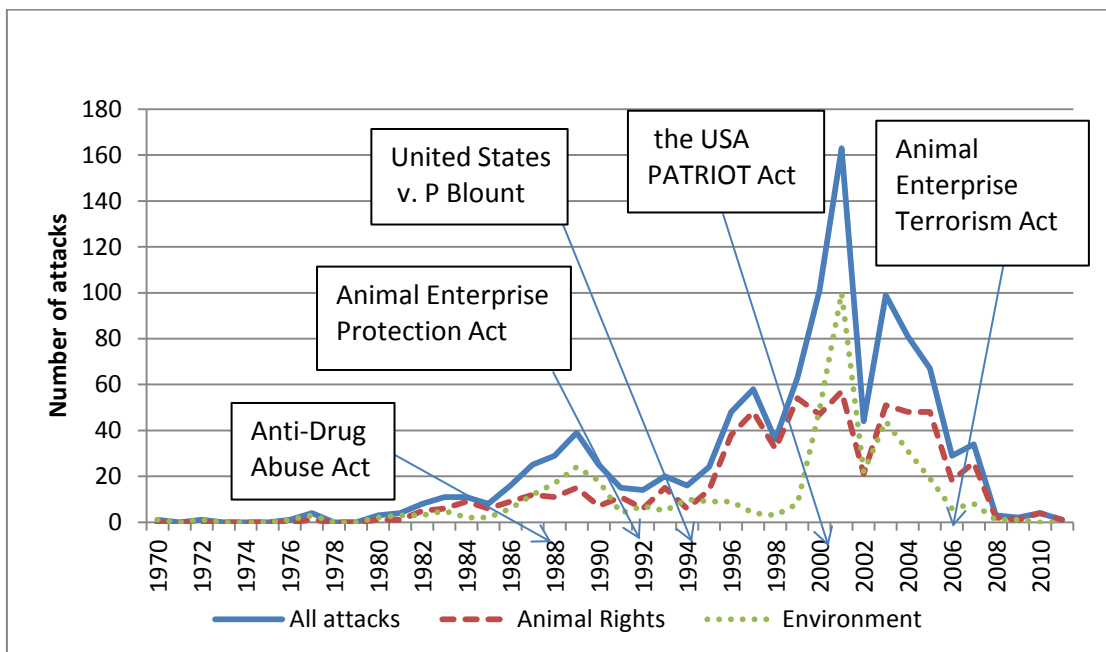
In the following section, we will present results from both interrupted time series analysis and series hazard modeling and compare the findings from both analyses.



### Analyses on U.S. Data (H 3)

The data includes incidents from 1970 to 2012; four legislations were selected for analysis: AEPA of 1992, AETA of 2006, ADA of 1988, and USA PATRIOT Act of 2001 (see Figure 5-2. for the timing of the legislations along with the eco-terrorism attack trends). The AEPA of 1992 and AETA of 2006 are aimed at extreme animal rights groups. As such, we separated the incidents based on ideology and analyzed the effects of legislation on environment-related attacks separately to determine whether legislation achieves intended effects on cases related to their focal concerns. Additionally, we include one high-profile litigation, the- *United States v. P Blount* (1989), in which John Blount was charged because of his involvement in tree-spiking action in Clearwater National Forest. We have in fact tested effects of all important litigations reviewed in the previous section. In addition to its symbolic meaning discussed in previous chapter, the *United States v. P Blount* (1989) case was the only one that showed significant results. Therefore we chose to include it in the interrupted time series analysis.

FIGURE 5-2. THE INCIDENTS PERPETRATED BY RADICAL ANIMAL RIGHTS GROUPS AND RADICAL ENVIRONMENTAL GROUPS IN US, 1970-2012





### *Interrupted Time Series Analysis*

#### Monthly Analysis of the U.S. Incidents

We first examine the monthly effects of the key legal events by comparing the pre-post difference using the ARIMA model. We found that the AEPA of 1992 led to a short-term backfire effect for animal rights incidents up to six months post the implementation of the act. That is, the number of attacks actually increased after the passage of the act (see Table5-1). However, the AEPA of 1992 does not have any substantial impacts on the activities of environmental groups. On the other hand, the AETA of 2006 shows strong deterrent effects for both radical animal rights groups and environmental extremist and the effects are still significant up to nine months post the augmentation of the legislation. The USA PATRIOT Act of 2001 shows similar effects as the AEPA of 1992 and the effects are limited to activity of radical animal rights groups. ADA of 1988 and the tree-spiking litigation both have positive effects on radical animal rights groups, but not for environmental extremist groups.

The backfire effects observed in the monthly analyses could be the results of two potential reasons. First, it is possible that the implementation of new legislation further raises awareness of animal rights protection and radicalizes more people to take direct action against the targets of interest. On the contrary, it is also possible that the new acts led to net-widening effects for law enforcement agencies to process more cases that would have otherwise been dismissed prior to when the acts took effect. In this case, the increases seen in the data could be an artifact of legal system processing preference. Going back to the nature of our data, both GTD and EID were compiled from open source information, which means that they are unlikely to be affected by bias of the criminal justice system. As such, it is more likely that this legislation did lead to more attacks within a short period of time after each act took effect, except for AETA of 2006.

As previously mentioned, the AETA of 2006 is an enhanced version of the AEPA of 1992. This analysis concluded that the AETA of 2006 can effectively reduce the number of attacks by both radical animal rights groups and extreme environmental groups. Why did these two acts produce such different results? Putting the AEPA of 1992 and the AETA of 2006 side-by-side, the



main difference is that the latter legislation expands the scope of control beyond the former. For animal-related businesses, the AETA of 2006 protects not only animal enterprises, but also their staff and related personnel. The penalty provisions of the AETA of 2006 are harsher than the AEPA of 1992, and the AETA of 2006 further increases the amount of civil compensation and provision of conspiracy. Under a more stringent and comprehensive formulation, the AETA of 2006 seems to be more effective than the AEPA of 1992.

TABLE 5-1. MONTHLY ARIMA ANALYSIS COMPARING THE PRE-POST EFFECTS OF LEGISLATION IN THE U.S.

INTERVENTIONS	3 MONTHS PRE-POST ESTIMATE (P-VALUE)		6 MONTHS PRE-POST ESTIMATE (P-VALUE)		9 MONTHS PRE-POST ESTIMATE (P-VALUE)	
	Animal rights	Environment	Animal rights	Environment	Animal rights	Environment
<b>Legislations</b>						
AEPA	1.913*** (.000)	.082 (.700)	1.889*** (.000)	.067 (.751)	1.864*** (.000)	.052 (.803)
AETA	-1.438*** (.011)	-1.696 (.051)	-1.574** (.003)	-1.768* (.030)	-1.711*** (.001)	-1.841* (.016)
USA PATRIOT Act	.974 * (.027)	.605 (.384)	.850* (.048)	.497 (.464)	.726 (.084)	.389 (.557)
ADA,1988	1.106* (.019)	.799 (.248)	1.099* (.020)	.784 (.259)	1.092* (.021)	.769 (.270)
<b>Litigations</b>						
United States v. John P. Blount	2.726*** (.000)	1.195 (.079)	2.591*** (.000)	1.111 (.081)	2.556*** (.000)	1.086 (.088)

\*\*\*significant at  $p < .001$  \*\*significant at  $p < .01$  \*significant at  $p < .05$

Note: Total Number of Attacks: Animal Rights Attacks= 631; Environmental Attacks=440

### Yearly Analysis of the U.S. Incidents

From a public policy standpoint, analyzing monthly effects might be too shortsighted. Therefore, we repeated the same analyses using annual data with the same legal events. The pre-post analysis shows that AEPA of 1992 and ADA of 1988<sup>18</sup> had no long-term effects on sub-

18 Using series hazard modeling, Carson (2013) concluded that the ADA of 1988 reduced subsequent hazard of eco-terrorist attacks. Since we only discuss the changes in attack frequency, the results are somewhat different.



sequent attacks for both radical animal rights groups and environmental extremist groups. On the contrary, the implementation of AETA of 2006 had significant deterrence effects for both groups at the three years marker. Based on the results, the AETA of 2006 reduced over twenty-five incidents perpetrated by both groups when we look at the three-year effects (see Table 5-2). It is worth noting that the USA PATRIOT Act of 2001 has the strongest deterrence effects for both radical animal rights groups and extreme environmental groups starting the first year of implementation. Although the USA PATRIOT Act of 2001 was not designed to specifically target eco-terrorism, it does have a strong impact on terrorist-related attacks. For animal right groups, it reduced over twenty-five incidents and for environmental extremists, the magnitude of reduction is greater than seventy-five incidents in all tests.

The analysis of litigation in *United States v. John P. Blount* (1989) case shows an interesting finding. Originally, the tree-spiking case was related to an environmental protection issue, rather than an animal protection emphasis. However, it seems like this litigation set an example for radical animal rights groups and reduced their number of attacks while it had no effect on extreme environmental groups.

TABLE 5-2. YEARLY ARIMA ANALYSIS COMPARING THE PRE-POST EFFECTS OF LEGISLATION IN THE U.S.

INTERVENTIONS	1 YEAR PRE-POST ESTIMATE (P-VALUE)		2 YEARS PRE-POST ESTIMATE (P-VALUE)		3 YEARS PRE-POST ESTIMATE (P-VALUE)	
	Animal rights	Environment	Animal rights	Environment	Animal rights	Environment
<b>Legislations</b>						
AEPA	17.554 (.094)	5.141 (.713)	16.108 (.123)	3.982 (.775)	14.663 (.164)	2.823 (.841)
AETA	-10.386 (.345)	-15.947 (.294)	-18.822 * (.045)	-20.490 (.105)	-27.258 ** (.003)	-25.033* (.039)
USA PATRIOT Act	-26.353* (.021)	-76.376*** (.000)	-29.234** (.010)	-79.059*** (.000)	-32.115** (.006)	-81.937** (.002)
ADA, 1988	8.019 (.480)	9.008 (.528)	7.242 (.534)	8.160 (.576)	6.465 (.593)	7.311 (.627)
<b>Litigations</b>						
United States v. John P. Blount	31.172*** (.000)	9.726 (.476)	28.759*** (.000)	8.138 (.544)	26.347*** (.001)	6.550 (.624)

\*\*\*significant at p <.001\*\*significant at p <.01\*significant at p<.05

Note: Total Number of Attacks: Animal Rights Attacks= 631; Environmental Attacks=440



To further understand the seemingly contradictory attack patterns of the two ideological orientations, we examine our data closely to identify if there are any important factors left out of our models. Looking at the frequency of attacks by extreme animal rights groups, we notice that the number of attacks rises sharply between 1999 and 2001, with 2001 being the highest time point. Further investigation shows that the most frequent perpetrators during the period are the ALF (accounted for 56% of animal protection attacks) and the Earth Liberation Front (accounted for 62% of environmental protection attacks). During this time, the FBI launched Operation Backfire to hunt down members of ALF and ELF. This operation led to a large scale of arrests of key members of the organizations. The number of recorded incidents of the Family increased from twenty-six incidents per year in 1997 to 111 incidents in 2001. As such, Operation Backfire could backfire and perhaps lead to the defiant effects by these two groups. This hypothesis is supported by the analysis results shown in Table 5-3 where Operation Backfire has a strong positive and significant impact on trend of activities of the ALF and ELF. Though we cannot possibly explain the mechanism behind the trend with our data, however, comparing the general trend of eco-terrorism excluding the ALF and ELF incidents shows that the increase in activities of the Family is much stronger than we would expect judging by the trend. The result lends us confidence that the effects are somewhat specific to The Operation Backfire, or factors related to the Family.

TABLE 5-3. ARIMA ANALYSIS ON THE EFFECTS OF OPERATION BACKFIRE

INTERVENTION	ESTIMATE (P VALUE)
Operation Backfire	188.389***(.000)

\*\*\*significant at  $p < .001$  \*\*significant at  $p < .01$  \*significant at  $p < .05$

Note: because of this operation targeted specifically on the ALF and the ELF, we only analyzed attacks by the ALF and the ELF in the ARIMA analysis and the length of the intervention was coded to match the real length of the operation (10 years).<sup>19</sup>

<sup>19</sup> It is possible, however, that the effects we found for Operation Backfire were confounded with effects of other legislations. As such, we ran series hazard model to tease out this potential spurious findings. Due to the overlapping time period, we included both the USA PATRIOT Act and Operation Backfire to see if the inclusion of the former reduces the magnitude of the effect of the latter on the activities of The Family. The results show that Operation Backfire, after controlling for the effect of the USA PATRIOT Act, still has a strong positive effect on exacerbating the activities of The Family while the USA PATRIOT Act does not have impact on the outcome.





*Series Hazard Modeling on U.S. Data*

For the series hazard modeling, we estimated two separate models: (1) incidents perpetrated by radical environmental groups, and (2) incidents perpetrated by animal rights groups. The results are shown in Table 5-4. In the models, we tested the effects of all key legislation and their interaction effects to see if the effects of the interventions are time-dependent.

Our dependent variable include days until next attack (average of fourteen days), next animal-rights attacks (average of twenty-one days), and next environmental attack (average of thirty-six days). The average days since the last incident are fifteen for all eco-terrorism attacks, twenty-two for animal-rights attacks, and thirty-six for environmental attacks. Moreover, the number of successful events may increase the hazard of new attacks when others notice that success. The success density for total incidents is .91, .91 for animal-rights incidents, and .90 for environmental incidents.

The analysis results are shown in Table 5-4. Overall, we can tell by the positive and significant coefficient of the `monthly_count` variable that the hazard ratio was increasing gradually over time before any legislation took effect. We composed interaction effects of the intervention and a monthly count of incidents to examine whether the effect is time dependent. In an interaction model, the hazard ratio should be calculated from a combination of the main and interaction effects. However, as what is common for interaction models, when the interaction term is significant, the attempt to interpret the main effect is meaningless (Dugan and Yang 2012). Following this standard, the effects of legislations are reviewed below. The enactment of ADA of 1988 increased hazard of new attacks of the radical environmentalists but had no impact on animal rights attacks. AEPA of 1992 reduced the hazard of animal rights attacks, but had no impact on the attacks carried out by environmental groups. AETA of 2006, on the other hand, had impacts on attacks of both ideologies; but, its effect on animal rights attacks continued throughout the remainder of the series. The USA PATRIOT Act of 2001, however, failed to show any effect on the hazard of new attacks committed by both groups.



TABLE 5-4 . COEFFICIENTS FOR SERIES HAZARD MODEL ON DAYS UNTIL NEXT ATTACK

	ANIMAL RIGHTS ATTACKS	ENVIRONMENT ATTACKS
Interventions		
ADA	.261 (.307)	.713*** (.001)
ADA*M.Count	----- -----	----- -----
AEPA	-.653* (.030)	-.446 (.282)
AETA	1.192*** (.001)	-.856** (.009)
AETA*M.Count	-.004*** (.000)	----- -----
USAPATRIOTAct	-.086 (.629)	-.259 (.279)
Success_Dens	.002*** (.000)	.001 (.169)
Monthly count	.005*** (.000)	.004*** (.000)

\*\*\*significant at  $p < .001$  \*\*significant at  $p < .01$  \*significant at  $p < .05$

Note: Number of Attacks: Animal Rights Attacks= 631; Environmental Attacks=440

### Analysis in Canada

In this section, we examine effects of three acts: the Canada Criminal Code of 1985, the Health of Animals Act Subsection of 1990, sec. 64, par. (1), and the Migratory Birds Convention Act of 1994, and one litigation, the *USA v. Barbarash* (2002), to understand whether these legal events produce any deterrence effect on eco-terrorism in Canada. The *USA v. Barbarash* (2002) case was chosen for its wide impact on bilateral collaboration between the American and Canadian governments. Due to the geographic proximity, in this section we include not only Canadian eco-terrorist incidents but also cases that occurred within states



that share a land border with Canada. Understanding legal regulations and patterns of both the U.S. and Canada could help the two countries to build a better bilateral collaboration in preventing future eco-terrorist attacks.

Annual analysis shows that the Migratory Birds Convention Act of 1990 led to an increase in the number of attacks by extreme animal rights groups up to three years, but not for the environmental extremists. On average, this act increases about eight animal right protection related attacks per year. All other analyses lead to null findings. Due to a statistical power issue, we do not present monthly analysis or series hazard model results in this report. However, the analysis results are quite similar to what we found in the annual analysis results (see Table 5-5).

TABLE 5-5. ARIMA ANALYSIS ON THE PRE-POST EFFECTS OF LEGISLATION IN CANADA (INCLUDING REGIONS NEAR THE CANADA-U.S. BORDER)

INTERVENTIONS	1 YEAR PRE-POST ESTIMATE (P-VALUE)		2 YEARS PRE-POST ESTIMATE (P-VALUE)		3 YEARS PRE-POST ESTIMATE (P-VALUE)	
	Animal rights	Environment	Animal rights	Environment	Animal rights	Environment
<b>Legislations</b>						
Canada Criminal Code 1985	.042 (.994)	4.808 (.409)	-.301 (.957)	4.566 (.475)	-.644 (.918)	4.323 (.538)
Health of Animals Act, Subsection 64(1).1990	4.748 (.316)	-2.596 (.631)	4.278 (.386)	-3.323 (.555)	3.809 (.466)	-4.050 (.493)
Migratory Birds Convention Act,1994	10.668** (.006)	-2.676 (.616)	9.717* (.012)	-3.335 (.535)	8.766* (.024)	-3.994 (.467)
<b>Litigations</b>						
The USA and Barbarash (2002)	2.575 (.498)	-2.236 (.647)	-.099 (.977)	-3.812 (.396)	-2.773 (.406)	-5.388 (.208)

\*\*\*significant at p <.001\*\*significant at p <.01\*significant at p<.05

Note: Total Number of Attacks: Animal Rights Attacks= 181; Environmental Attacks=142



## CHAPTER 6 CONCLUSION

This research demonstrates a unique nature of eco-terrorism from both a legal and a criminological perspective. From the descriptive analysis, we show that eco-terrorists are less likely to cause casualties, more likely to attack private companies and businesses, and cause greater property damage than other types of terrorism attacks that are commonly seen in the global community. The geographic distribution of attacks also shows a clear concentration of cases clustering around the coast of the U.S., among which, California and New York are clearly the “hot spots” of both types of eco-terrorist attacks. Additionally, the international boundary between the U.S. and Canada also attracts more eco-terrorism incidents than the interior regions of Canada.

From our legal analysis, we identified several terrorism related regulations across the three countries. Canada and Japan both have anti-terrorism regulation with general emphasis. Only America has regulations directly designed to counter eco-terrorism—the AETA of 2006. Moreover, the U.S. has also passed bills like ADA of 1988 and AEPA of 1992 to handle cases related to attacks driven by environmental and animal rights protection. This is not surprising as the U.S. has significantly more eco-terrorist attacks (1,141 attacks) compared to the other two countries (eight attacks in Canada and seventeen attacks in Japan) and therefore, has a greater need to have laws addressing the issues. Interestingly, however, given the existence of special laws targeting eco-terrorism, these laws have been rarely applied. Often time, the courts charged and sentenced eco-terrorist cases with general state laws based on criminal elements. This is similar to the practices observed in Canada and Japan where no special laws were designed to deal with eco-terrorism.

Despite the fact that the special laws have not been commonly adopted, the enactment of these legal regulations combined with corresponding litigation perhaps still serve as important deterrence factors preventing subsequent attacks. In order to examine this possibility, we ran time series models to determine the difference in number of attacks before and after the enactment of each important legal act. Furthermore, we also modeled changes in hazards of new attacks after the enactment of new policies controlling for contextual effects between attacks.



Results from the time-series analysis on the U.S. cases show that not all legal acts are equally effective in deterring future eco-terrorism attacks. Specifically, we found that the AETA of 2006 and the PATRIOT Act of 2001 both significantly decreased the number of eco-terrorist attacks in the United States. The AEPA of 1992, however, had a short-term backfire effect leading to an increase in eco-terrorism several months after its implementation. Additionally, the Operation Backfire had radicalized the activities from the Family, the main target of the operation. This could be a net-widening effect resulted from the operation, or it could be a defiant reaction coming from the Family.

The results from series hazard modeling reveal a similar story. The enactment of the ADA of 1988 increased the hazard of new attacks of the radical environmentalists but had no impact on animal rights attacks. The AEPA of 1992 reduced the hazard of animal rights attacks, but had no impact on the attacks carried out by the environmental groups. The AETA of 2006, on the other hand, had impacts on attacks of both ideologies; but its effect on animal rights attacks continued throughout the remainder of the series. The USA PATRIOT Act of 2001, however, failed to show any effect on hazard of new attacks committed by both groups.

In sum, the AETA of 2006 and the USA PATRIOT Act of 2001 seem to have stronger deterrence effects than the AEPA of 1992 if we compare the before-and-after effects of the legislation. As for hazard of attack, both the ADA of 1988 and the AEPA of 1992 reduced hazard of occurrence of subsequent attacks for the initial period on their target groups. AETA of 2006, on the other hand, has a more comprehensive effect on overall eco-terrorist attacks. The USA PATRIOT Act of 2001 does not have impact on either special type of eco-terrorist attack. However, separate analysis shows that it does have an intended effect if we consider overall eco-terrorist attacks instead.

From legal observation, both the USA PATRIOT Act of 2001 and AETA of 2006 are anti-terrorism oriented enacted after the 9/11 attacks. The USA PATRIOT Act of 2001 authorized law enforcement agencies to take preventive measures monitoring the environmentalists on file. Consequently, environmentalists who carry out eco-terrorist attacks now face a more severe criminal



punishment and fines, which is authorized by the AETA of 2006. Perhaps, the severity of punishment serves as an effective deterrence factor. For example, the limited scope in defining “offense” and the more lenient punishment of the AEPA of 1992 make it less effective than the AETA of 2006 on deterring the radical environmentalists. Therefore, it is possible that the preventive measures taken by the law enforcement agencies and the severe punishment charges at the sentencing stage together provide an effective combination to reduce the number of eco-terrorism event. The analysis of the Operation Backfire also cautions us of the potential backfire effects when we push too hard on our targets.

Following this line of thought, perhaps we should consider the necessity of the inclusion of “terrorism” in the legislation. Labeling the activities done by these environmental groups or animal rights protection organizations may not be appropriate or necessary. In most cases, they do not intend to cause death or harm any human life. As such, calling them eco-terrorists might be a misleading and a wrongful presentation of their behaviors.

Furthermore, the lack of nationwide legislation on animal rights protection might also be one of the reasons to radicalize animal rights groups. Moreover, under the current regulation, those animal rights protection groups and animal advocates do not have legal standing to fight against the animal enterprises and government for not taking proper actions to respond to their requests and claims.

In Canada, we examined the effects of the Canada Criminal Code of 1985, the Health of Animals Act of 1990, and the Migratory Birds Convention Act of 1994 and found null effect for all of them on the number of attacks by eco-terrorism. This lack of effect could be due to the low number of eco-terrorist attacks in the country, or the lack of any special bill designed against eco-terrorism, though we do not think this is the case based on the legal analysis. Nonetheless, it is obvious that eco-terrorists are more active along the international boundary between the U.S. and Canada than on Canadian soil. Thus, future research needs to consider the possibility of geographic displacement of eco-terrorist activities when either country (most likely America) launches new prevention measure against the said terrorist groups.



As for policy recommendations, we identified the following issues from a legal perspective after comparing court decisions from the U.S., Canada, and Japan.

Across the three countries, only the U.S. incorporated “terrorism enhancements” into the legal system, like the AETA of 2006. However, the other two countries did not follow similar practices.

Both Canada and Japan do not have special regulations protecting animal enterprises. Only the U.S. has the AEPA of 1992 and the APTA of 2006 with this specific emphasis.

The judicial branches in Canada and Japan charged the “eco-terrorists” with general criminal charges and the court followed. Only the U.S. courts used enhancement charges and punitive damages when sentencing the defendants in eco-terrorism cases.

There have been more eco-terrorism cases in Japan than in Canada, but the majority are related to whale and dolphin protection. Moreover, most of the defendants in these cases were not Japanese citizens.

The Japanese government does not offer domestic regulations prohibiting whale and dolphin hunting. Although they signed and ratified the international treaties, the actual implementation and enforcement rates are very low and ineffective. As such, the domestic behaviors still attract attention from anti-whaling groups and countries. In order to reduce conflict, more regulations to protect whales and dolphins might be necessary. With the new ruling of the ICJ, the whaling-inspired attacks might continue if the government keeps whale hunting in the northern Pacific Ocean.

In sum, we would like to highlight the importance of comprehensive and legitimate legislation. The AETA of 2006 in US achieved its intended deterrence effects preventing eco-terrorism attacks while the AEPA of 1992 backfired. The different result might stem from the broader coverage of AETA of 2006 than AEPA of 1992. However, all three countries we reviewed do not have regulations or special measures to protect the rights on animals used for experimentation. While there are many regulations or treaties to protect wildlife or animals in wilderness, experimental or testing animal protection is a missing part in the legal arena. Lacking legal standing



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and regulations is the major reason for environmentalist or animal rights groups to take radical actions against government, businesses, and animal enterprises since their concerns are not properly addressed in the legal system. In order to reduce future conflicts and potential attacks, the government and legislators need to think about this issue and consider whether it is necessary to create standards and ethical rules to protect experimental animal rights.





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仙台高等裁判所平成22年（う）第217號.

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## APPENDIX A. THE LIST OF ECO-TERRORIST GROUPS

GROUP NAME	THE TOTAL NUMBER OF ATTACKS, 1970-2012
ALF (ALF)	428
Earth Liberation Front (ELF)	248
The Sea Shepherd Conservation Society	3
Greenpeace	10
People for the Ethical Treatment of Animals (PETA)	47
Earth First!	47
The Coalition to Save the Preserves	8
The Hardesty Avengers	0
Stop Huntingdon Animal Cruelty	70
Hunt Saboteurs Association	0
Huntingdon Life Sciences	13
Center for the Defense of Free Enterprise	2
Movement for the Emancipation of the Niger Delta (MEND)	0
The Family	21
Airport Protesters	2
Anarchist Golfing Association	1
Animal Avengers	5
Animal Defense League	4
Animal Liberation Action Foundation (ALAF)	1
Animal Liberation-Tactical Internet Response Network	1
Animal Rights Activists	2
Animal Rights Direct Action Coalition	3
Animal Rights Kollektive II (ARK II)	1
Animal Rights Brigade	1
Anti-Narita Extremists	2
Band of Mercy	3
Biotic Baking Brigade	2
Boston Coalition for Animal Liberation	1
Coalition Against Militarism, Animal Abuse and Environmental Hazards	1
Coalition to Abolish the Fur Trade	2
Coalition to End Primate Experimentation	1
Coalition to Save the Preserves (CSP)	8
Compassion Over Killing	2
Cornell Students for the Ethical Treatment of Animals	1
DAFA and SOAR	1
Night Action Kids	1
Eco-Commando Force	1
Eco-raiders	1





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GROUP NAME	THE TOTAL NUMBER OF ATTACKS, 1970-2012
Eco-terrorists	1
Eco-warriors	1
European conservation organization	1
Evan Mecham Eco-Terrorist International Conspiracy	3
Farm Animal Reform Movement (FARM)	3
Farm Freedom Fighters	2
Fran Trutt	1
Fred Hampton Unit of the People's Forces	1
Fund for Animals (FFA)	1
In Defense of Animals (IDA)	5
Genetix	3
Justice Department	14
Last Chance for Animals (LCA)	5
Liberation Collective	2
Mobilization for Animals (MFA)	1
New Jersey Animal Rights Alliance	1
Nuclear Liberation Front	2
PBFPF & Swamp Fox	1
People of the Earth	1
People's Brigade for a Healthy Genetic Future	1
Petaluma Pruners	1
Reclaim the Seeds	1
Revolutionary Cells-Animal Liberation Brigade	2
Rocky Mountain Animal Defense	1
Sea Defense Alliance	2
Seeds of Resistance	1
Sonoma People for Animal Rights	1
Students Against In Vivo Experiments and Dissection (SAVED)	1
Last Chance for Animals	1
The Squamish Five( the Vancouver Five)	1
True Friends	1
Undersea Railroad	1
Urban Gorillas	1
Utah Animal Rights Coalition	1
Washington Tree Improvement Association	1
Western Wildlife Unit	1



## APPENDIX B. KEY WORDS

APPERTAINING	KEY WORDS	REFERENCE	NUMBER OF ATTACKS
Group Name	Stop Huntingdon Animal Cruelty	Carson,2013	1( in U.S.)
	Earth Liberation Front	Carson,2013, Buell,2009, Joose,2007, Vanderheiden,2005	239( in U.S.) 2(in Canada)
	Hunt Saboteurs Association	Carson,2013	0
	Huntingdon Life Sciences	Carson,2013	1( in U.S.)
	Earth First!	Buell,2009, Joose,2007, Vanderheiden,2005, Eagan,1996	47(in U.S.)
	Greenpeace	Joose,2007, Zelko,2004, Eagan,1995	8(in U.S.)
	Center for the Defense of Free Enterprise	Joose,2007	2(in U.S.)
	The Sea Shepherd	Buell,2009, Eagan,1996	0
	People for the Ethical Treatment of Animals	Joose,2007	70(in U.S.)
	ALF	Carson,2013, Buell,2009, Joose,2007	365(in U.S.) 2(in Canada)
Key words used in the search procedures	Environment		
	Environmental development		
	Exploitation		
	Ecotage	Vanderheiden,2005	
	ecological		
	Disobedience/civil disobedience	Vanderheiden,2005, Eagan,1996	
	Radical/ radicalism		
	Fur		
	Spike (tree spiking)	Buell,2009, Eagan,1996	
	Whale		
	Logging		
	Drift-net fishing		
	Animal (animal rights)		
Monkey wrench	Buell,2009, Carson,2013		
Deep ecology	Buell,2009, Eagan,1996		



## APPENDIX C. SANDAI HIGH COURT HEISEI 22 YEAR (う) No. 21

《全文》

【文献番号】25472600

各建造物侵入，窃盗被告事件

仙台高等裁判所平成22年（う）第217号

平成23年7月12日第1刑事部判決

判決

団体職員 A 昭和52年〇〇月〇〇日生

自営業 B 昭和42年〇〇月〇〇日生

上記両名に対する各建造物侵入，窃盗被告事件について，平成22年9月6日青森地方裁判所  
が言い渡した判決に対し，各被告人から各控訴の申立てがあったので，当裁判所は，検察官山下  
純司出席の上審理し，次のとおり判決する。

主文

本件各控訴をいずれも棄却する。

理由

### 1 控訴の趣意等

本件各控訴の趣意は，被告人両名の主任弁護士只野靖，弁護士海渡雄一，同小野允雄，同日隅  
一雄及び同磯裕一郎共同作成の控訴趣意書（弁論要旨を含む。なお，主任弁護士は，当審第1回  
公判期日において，理由不備の主張は法令適用の誤りの一事情としての主張，事実誤認の主張は  
正当行為等の主張に関する事実を誤認したとの主張，建造物侵入の目的を窃盗目的と認定した点  
が誤りとの主張は不法領得の意思に関する法令適用の誤りの主張であることをそれぞれ釈明し  
た。）に，検察官の答弁は，検察官山下純司作成の答弁書にそれぞれ記載されたとおりであるか  
ら，これらを引用する。

被告人両名の各論旨は同旨であって，訴訟手続の法令違反，事実誤認，法令適用の誤り及び量  
刑不当の主張である。

### 2 訴訟手続の法令違反の各論旨について

（1）各論旨は，要するに，原審弁護士が，原判示鯨肉の荷主を含む調査捕鯨船〇〇丸の船員ら  
による鯨肉の業務上横領行為の成否にかかわると主張した平成21年7月17日付け証拠開示命  
令請求書中の「開示命令を求める証拠リスト」欄記載の各証拠について，原審検察官が全部又は  
一部を不開示とし，これを不服とする裁定請求に対し，原審がその証拠開示に関する裁定請求（  
証拠開示命令請求）を棄却したことは，それぞれ刑法316条の20又は316条の26に違  
反し，被告人両名側の防御権を侵害する重大な法令違反に該当するから，原審訴訟手続には，判  
決に影響を及ぼすことが明らかな法令違反がある，というのである。

（2）そこで検討すると，原審は，所論指摘の平成21年8月10日付け証拠開示に関する裁定  
請求（証拠開示命令請求）棄却決定において，後記のとおり被告人ら3名の建造物侵入，窃盗  
の行為は，正当行為として違法性が阻却されるべきである上，憲法21条並びに市民的及び政治  
的権利に関する国際規約（以下「人権規約」という。）19条に照らして，被告人両名は無罪で  
あるとの各予定主張及び量刑上の予定主張と関連するとの原審弁護士の主張について，公判審理  
の中心に据えて検討すべきは，公訴事実に係る被告人ら3名の行為の目的，その手段・態様及び  
前記窃盗被害者に生じた被害結果等であり，〇〇丸の船員らの横領行為の存否の解明は必要不可  
欠とはいえず，この問題にかかわる各証拠と予定主張との関連性の程度は限定的に考えるべきで  
あるとした上で，裁定請求に係る各証拠につき，提示命令を踏まえて，内容を個別に検討して  
も，供述者本人を含む関係者のプライバシー侵害の程度等の弊害を考慮してもなお開示の必要  
性が高いと認められるものは見当たらず，予定主張との関連性の程度，開示の必要性の程度並び  
に開示によって生じるおそれのある弊害の内容及び程度を考慮すると，開示することが相当とは認  
められない旨説示し，裁定請求を棄却した判断は相当として是認でき（ちなみに，同棄却決定に



対する即時抗告は同年9月28日に、同即時抗告棄却決定に対する特別抗告は同年11月17日にそれぞれ棄却されている。)、この判断は所論主張の公判審理の経過等によっても左右されない。したがって、所論指摘の原審検察官の証拠開示の対応にも違法な点は認められない。

(3) その他、所論が縷々主張する点を検討しても、原審訴訟手続に所論のこのような法令違反はなく、論旨はいずれも理由がない。

### 3 不法領得の意思に関する法令の解釈適用の誤りの各論旨について

(1) 各論旨は、要するに、原判決は、罪となるべき事実において、被告人両名が、C(以下「C」といい、被告人両名を含めた3名につき、「被告人ら3名」ともいう。)と共謀の上、窃盗の目的で、平成20年4月16日、原判決E株式会社(以下「E」という。)青森支店支店長代理が看守する青森市内所在の同支店社屋(以下「支店社屋」という。)内に侵入した上、同人管理の宅配段ボール箱(以下「本件段ボール箱」という。)に入った鯨肉約23・1キログラム(時価約5万8905円相当、以下「本件鯨肉」という。)を窃取した(以下、支店社屋内の侵入行為及び本件鯨肉の入った本件段ボール箱の占有取得行為について、「本件行為」ともいう。)と認定したが、被告人ら3名は、捜査機関に本件鯨肉を届け出るまでの間に、調査捕鯨船において鯨肉を船員が勝手に持ち帰っているなどとの情報に基づく調査活動の成果として公表する目的で、支店社屋内に立ち入って本件段ボール箱を持ち出し、これを開披して、中身が鯨肉であることを確認した上、その肉片をサンプルとして採取する行為をしたに過ぎず、本件段ボール箱に入った本件鯨肉の占有取得行為について不法領得の意思はなく、ひいては、支店社屋内の立入りの目的も、窃盗目的とはいえないから、これらと異なる認定判断をした原判決には、判決に影響を及ぼすことが明らかな不法領得の意思に関する法令の解釈適用の誤りがある、というのである。

(2) そこで検討すると、関係証拠を総合すれば、被告人ら3名の本件鯨肉の入った本件段ボール箱の占有取得行為について不法領得の意思を肯定することができるというべきである。以下、所論にかんがみ、補足的に説明することとする。

(3) まず、関係証拠により、被告人ら3名が本件鯨肉の入った本件段ボール箱の占有を取得するに至った前後の経緯を含めた状況をみると、原判決が「争点に対する判断」の第1の事実関係の項で説示するとおり認められ、これに若干の点を付加して、概要を摘記すると、次のようなものである。

[1] 被告人Aは、環境保護等を目的とするいわゆる非政府組織であるFの海洋生態系問題部長として、日本の調査捕鯨に反対し、その中止や見直しを求めるいわゆる反捕鯨活動を行っていたが、平成20年1月ころ、調査捕鯨船の元船員を名乗る者から、調査捕鯨船の船員が鯨肉を勝手に持ち帰ったり、市場に横流したりしているなどとの情報を得たことから、真偽を確認の上、真実と判明した場合には公表することを念頭に置いて、調査を開始し、まもなく、Fでアクションコーディネーターとして活動していた被告人Bにも調査への協力を依頼し、被告人Bもこれに応じて加わった。

[2] かくするうち、被告人Aは、南極海で調査捕鯨に従事していた調査捕鯨船〇〇丸の船員が同年4月15日に帰国予定であったことを知って、同船員らの帰国時に本格的調査を行うため、自己をリーダーとする調査チームを編成し、この種の調査活動に精通しているCらをメンバーに迎えた。

[3] そして、被告人らは、〇〇丸の船員はEに鯨肉の宅配を依頼している模様との情報を基に、同船員が同社に配送を依頼する荷物の追跡調査をすることとし、同月15日、帰国した〇〇丸の船員がEのトラックに荷物を積み込むところを確認するなどした。

[4] 次いで、同日中に、被告人ら3名は、荷物の配送先の一つと見込まれた青森県に赴き、同月16日午前中、被告人Bの運転するレンタカーで、青森市内所在のE青森支店に向かったところ、その車中において、Cは、数日前に被告人両名も参加していたミーティングで主張していた内容と同様、可能であれば、船員の荷物を持ち出して中身を確認し、中身が鯨肉であれば、ビデオカメラ等で撮影し、DNA検査用のサンプルを採取することを強く提案し、被告人両名もこれに賛同したが、この時点では、あくまでも、それら作業終了後に同荷物を支店社屋内に返還する



予定であった。

〔5〕まもなく、被告人ら3名は、E青森支店付近に到着し、車で周囲を移動しながら、支店社屋内の様子を窺ううち、被告人Aが〇〇丸の船員らのものと思われる宅配段ボール箱が置かれているのを発見した。

これを受け、被告人Bは、車を同支店裏手に停車し、被告人Aら2人を車内に残して同支店へ向かい、部外者の無断立入りを禁止する旨表示された警告板が設置されている配送車両用出入口から、支店社屋内に入り込んだ上、荷物が置かれているホームに上がって、奥に進んで行き、〇〇丸の船員らのものと思われる宅配段ボール箱が積まれているのを発見して近付くと、宛先に〇〇丸の船員とみられると把握していたDとの記載のある段ボール箱4箱があることを確認した。

被告人Bは、同段ボール箱には鯨肉が入っていると踏んで、支店社屋の正面事務所にも人の気配がないことから、持ち出す好機と捉え、同段ボール箱のうちの一つである本件段ボール箱を両手で抱え上げて、そのまま、支店社屋外に持ち出し、同支店裏手の車内で待機していた被告人Aに渡した上、同車を運転発進させて、いち早くその場を離れた。

〔6〕被告人ら3名は、本件段ボール箱の中身の確認等作業を車内で行うことも検討したが、結局、青森市内のホテル客室で実施することが適切と判断し、開披に必要なカッターや採取するサンプルを入れる容器等の必要な用具を買い揃えた上で、予約したホテル客室に運び入れた。

そして、被告人ら3名は、ガムテープや紐で嚴重に梱包された本件段ボール箱を開披し、透明ポリ袋に包まれた畝須肉10塊が入っていることを確認した上、秤で重量を量ったり、ビデオカメラで撮影したり、DNA検査に使用するための肉片3片をサンプルとして採取して容器に入れたりした後、再び、本件段ボール箱に戻して梱包した。

〔7〕この一連の作業終了後、被告人Aは、もともと念頭に置いていた調査結果の公表に加えて、荷主を業務上横領罪の被疑者として捜査機関に告発することをとも考えることとし、それらのための決定的証拠資料として、本件段ボール箱に入った本件鯨肉を保管しておくことを提案し、被告人B及びCの賛同を得たため、翌日に向け、北海道内での追跡調査活動に携行した後、当初はF事務所で保管し、暫くして貸倉庫に移した。

〔8〕被告人Aは、同月21日ころ、当審弁護人の1人に前記捜査機関への告発の件等を相談したところ、速やかに本件段ボール箱に入った本件鯨肉を捜査機関に届け出るよう助言されたが、追加調査等を理由に直ぐには応じようとしなかった。しかし、同年5月15日に至り、被告人Aは、記者会見を開き、追加調査を含めた一連の調査結果に基づき、本件鯨肉の存在や入手経過を公表した上、東京地方検察庁に対し、Dら12名を業務上横領罪で告発する旨の告発状を提出し、同月20日に同告発状が受理されたことに伴い、同月21日には本件鯨肉の入った本件段ボール箱を提出した。その後、告発されたDら12名はいずれも不起訴処分となった。

〔9〕なお、本件段ボール箱は、〇〇丸の船員の1人であるDが、北海道函館市内の自宅に宛てて配送を依頼した宅配段ボール箱4箱のうち1箱であり、中継場所であるE青森支店で一時保管中のものであった。

(4) 前記(3)の事実関係によれば、被告人ら3名は、調査捕鯨船の船員による鯨肉の不正な持ち帰りや市場への横流し疑惑についての真偽を確認の上、真実と判明した場合には、成果を公表することを念頭に置いて調査活動をする中、この調査活動の一環として、調査捕鯨船である〇〇丸の船員による鯨肉の不正な持ち帰りに関する証拠資料を収集する目的の下に、同船員が自宅に宛てて配達を依頼してE青森支店が一時保管中の本件鯨肉の入った本件段ボール箱の占有を取得した上で、これを開披して中身を確認し、実際に鯨肉であれば、ビデオカメラで撮影するとともに、鯨肉の一部をサンプルとして採取して保全しておくため、本件鯨肉の入った本件段ボール箱の占有取得行為に及んだものである。したがって、被告人ら3名において、当初の占有取得時には、証拠資料を収集するとの目的を達成した後には返還する意思であったにしても、公表を念頭に置いた調査活動に資するための証拠資料を収集する目的の下に、権利者を排除し、本件段ボール箱ごと本件鯨肉の支配を取得し、開披して中身を確認後に、本件鯨肉について、撮影をし



たり、サンプルを採取して保全するという、所有者にして初めてなし得るといえるような方法により、本件段ボール箱ごと本件鯨肉を利用しようとする意思に基づき、本件鯨肉の入った本件段ボール箱の占有を取得したものであるから、不法領得の意思が肯定できるといわなければならない。

(5) これに対し、所論は、被告人ら3名の本件行為は、捜査機関への届出行為の一環として行われたものであるから、不法領得の意思は否定されるべきである旨主張する。なるほど、被告人Bは、原審公判において、本件鯨肉の入った本件段ボール箱の占有を取得する目的の一つとして、最終的に可能であれば捜査機関への告発も念頭にあったかのような供述をしている。しかしながら、他方で、被告人Bは、原審公判でも、捜査機関への告発は全く予定になかった旨をも供述しているだけでなく、検察官調書においては、被告人Aから本件鯨肉を証拠として保管しておくことを提案された際、本件鯨肉の状況をそのまま世論に伝えることができるなどと思って賛成した旨供述するにとどまっていて、捜査機関への告発には特段言及していないばかりか、作成に係る上申書でも、鯨肉横領事件を暴く唯一の物証である旨理解したとするに過ぎず、同様に捜査機関への告発に触れるところがない。加えて、本件調査活動の責任者である被告人Aは、原審公判において、本件鯨肉に対するサンプルの採取保全等の一連の作業後、不正行為を確信したため、もともと念頭に置いていた調査結果の公表に加えて、捜査機関への捜査に委ねるのが適当であると考えてに至って、告発をも予定することとし、本件段ボール箱に入った本件鯨肉をそれらの決定的資料とすべく、返還を取り止めて、保管することを提案した旨明言しているのである。以上によれば、被告人Bの前記原審供述はそのままには信用できず、被告人ら3名は、前記のとおり、本件鯨肉の入った本件段ボール箱の占有取得時点では、公表を念頭に置いた調査活動に資する証拠資料の収集を目的としていたものであって、業務上横領容疑の証拠として捜査機関に届け出ることを具体的に念頭に置いていたとは認め難いから、所論は前提を欠くといわざるを得ない。そして、被告人ら3名において、本件段ボール箱ごと本件鯨肉の占有を取得し、当初の目的のとおり、本件段ボール箱の中身である本件鯨肉の確認、ビデオ撮影及びサンプルの採取保全との一連の証拠資料の収集を終えた後に至って、捜査機関への告発、ひいては、本件段ボール箱に入った本件鯨肉の提出の意思をも有するに至った点は、不法領得の意思を否定する事情となるものではなく、このことは、たとえ、被告人Bの前記冒頭の原審供述の如く、本件鯨肉の入った本件段ボール箱の占有取得時において、捜査機関への告発の目的についても抽象的かつ副次的に併有していたとしても、変わりはない。

(6) その他、所論が関係判例を引用するなどして縷々主張する点を踏まえても、被告人ら3名の本件鯨肉の入った本件段ボール箱の占有取得行為について、不法領得の意思を肯定した原判決は結論において是認でき、建造物侵入の目的を窃盗目的とした点にも誤りはなく、原判決に所論のこのような法令解釈の誤りは存しない。

論旨はいずれも理由がない。

#### 4 正当行為の主張に対する判断に関する事実誤認及び法令適用の誤りの各論旨について

(1) 各論旨は、要するに、本件鯨肉は荷主であるDの業務上横領行為によって入手されたものであり、被告人ら3名の本件行為は、確かな情報に基づいて唯一可能であった方法を用いた業務上横領行為を告発するための証拠収集活動にほかならないから、刑法35条の正当行為ないし超法規的な正当化(違法性阻却)事由に該当するにも拘わらず、荷主であるDが本件鯨肉を業務上横領その他の犯罪行為によって不正に入手したものと断定し得るような証拠はないなどとした上で、正当行為の該当性を否定した原判決には、判決に影響を及ぼすことが明らかな事実誤認ないし法令適用の誤りがある、というのである。

(2) そこで検討すると、関係証拠を総合すれば、被告人ら3名の本件行為が正当行為に該当しないことは明らかであって、原判決が「争点に対する判断」の項の第2の2において、被告人ら3名の本件行為が正当行為に該当しない旨詳細に説示するところも、概ね相当として是認できる。

すなわち、前記のとおり、被告人ら3名の本件行為は、当該行為時には、公表を念頭に置いた



調査活動に資する証拠資料の収集を目的としていたものにとどまり、業務上横領容疑の捜査機関への告発、ひいては、その証拠としての本件鯨肉の捜査機関への提出を具体的に念頭に置いていたとは認め難いから、本件行為が捜査機関に告発するための証拠収集活動として必要不可欠であったとの所論は前提を欠くといわざるを得ない。この点をおくとしても、被告人ら3名の前記調査活動が、たとえ公共の利益に関してなされたものであったとしても、それだけでその目的を達成するための手段・方法が正当化されるものではなく、他人の自由や権利を不当に侵さないように行わなければならないというべきである。したがって、被告人ら3名の本件行為のように、調査活動の手段・方法が建造物侵入、窃盗との刑罰法令に触れる以上は、その調査活動は違法性を帯び、正当行為に該当しないことは明白である。もとより、本件鯨肉が業務上横領行為によって不正に入手されたものであるなどとの所論主張の事実の有無は、被告人ら3名の本件行為が正当行為に該当するか否かの判断に影響を及ぼす事情とはいえない。

(3) その他、所論が種々主張するところを検討しても、被告人ら3名の本件行為について違法性が阻却されるべき事情は見当たらず、原判決に所論のこのような事実誤認も法令適用の誤りも存しない。

論旨はいずれも理由がない。

5 憲法21条及び人権規約19条各違反との主張に対する判断に関する事実誤認及び法令適用の誤りの各論旨について

(1) 各論旨は、要するに、前記のとおり、本件鯨肉は荷主であるDの業務上横領行為によって入手されたものであり、被告人ら3名の本件行為は、確かな情報に基づいて唯一可能であった方法を用いた業務上横領行為を告発するための証拠収集活動にほかならず、憲法21条及び人権規約19条が保障する表現の自由の行使であって、被告人ら3名の本件行為を建造物侵入、窃盗の各罪に問うことは、憲法21条及び人権規約19条にそれぞれ違反するから、これらと異なる判断をした原判決には、判決に影響を及ぼすことが明らかな事実誤認ないし法令適用の誤りがある、というのである。

(2) しかしながら、被告人ら3名の本件行為が、業務上横領容疑を告発するための証拠収集活動を目的とした行為ではないことは前記のとおりであるだけでなく、所論主張の表現の自由の行使といえないことも疑う余地はない。のみならず、たとえ、非政府組織の一員としての公共の利益に関してなされる公表を念頭に置いた調査活動の自由が、憲法21条の趣旨に照らし、尊重に値するとしても、その調査の手段・方法が他人の権利を不当に害するようなものは許されないと、被告人ら3名の本件行為のように、他人の権利を害する建造物侵入、窃盗という刑罰法令に触れる手段・方法によってなされる調査活動が、憲法21条の趣旨に照らして保障されているものとは到底解されず、憲法21条と同様の趣旨とみられる人権規約19条によって保障されているものと解されないことも同様といえる。なお、本件鯨肉が業務上横領行為によって不正に入手されたものであるなどとの所論主張の事実の有無は、それらの判断を左右しないことも明らかである。

(3) その他、所論が種々主張する点を踏まえても、被告人ら3名の本件行為を建造物侵入、窃盗の各罪に問い、被告人兩名を処罰することは憲法21条及び人権規約19条にいずれも違反しないとした原判決に、所論のこのような事実誤認ないし法令適用の誤りはなく、人権規約19条に違反しないとする説示内容にも所論主張の理由不備は存しない。

論旨はいずれも理由がない。

6 量刑不当の各論旨について

各論旨は、要するに、被告人兩名をいずれも懲役1年(3年間執行猶予)に処した原判決の各量刑はいずれも重過ぎて不当であり、被告人兩名に対してはいずれも罰金刑で処断するのが相当である、というのである。

そこで検討すると、本件は前記のとおり建造物侵入、窃盗の事案であるところ、被告人兩名は、外1名と共謀の上、調査捕鯨船の元船員からのいわゆる内部告発情報の入手を契機に、調査捕鯨船の船員らによる鯨肉の不正持ち帰りや市場への横流し等の疑惑についての公表を念頭に置



いた調査活動の一環として、捜査機関の手に委ねることなく、自ら証拠資料を収集する目的で、被害会社支店社屋内に侵入した上、配送途中の被害品である本件鯨肉を窃取したものである。このような被告人ら3名の行為が、社会通念上許容される調査活動の限度を著しく逸脱していることは明らかであって、自己の目的達成のためには手段を選ばないとの独り善がりといえる短慮な動機に酌むべき余地があるとは認められない。本件各犯行の態様も、被害会社支店の業務が行われ、従業員も現に稼働している同支店社屋内に不法に侵入した上、荷物受取人等の関係者であるかのように装い、誰何された際の言い訳も考えつつ、被害品を抱えて持ち出して窃取しており、大胆といえる。被害会社支店では、本件窃盗被害等を受け、荷主に対して被害弁償金として3万円を支払って謝罪するとともに、運送賃を免除する事態を余儀なくされた上、荷物の安全な保管及び配送を使命とする運送会社としての社会的信用も損なわれる結果を招来しており、前記3万円を負担した同支店責任者の被告人兩名に対する処罰感情は厳しいが、被告人兩名からは見るべき被害弁償等がなされていない。なお、所論は、被害品は業務上横領行為により取得されたものであるから、法的保護に値しない旨主張するけれども、業務上横領行為によって不正に入手したものではないとする荷主の供述を否定するに足るだけの決定的事情は存しない。被告人Aは、共犯者の中では立場が最も上位にある者として、本件各犯行を実行に移すことを了承の上、被告人Bに対して、〇〇丸の船員らが配送を依頼したとみられる被害品を含む荷物の所在を発見教示し、これを受けた被告人Bが実行行為に及んでおり、それぞれ重要な役割を果たしている。加えて、被告人兩名とも反省の情が十分ではない。以上によれば、被告人兩名の各刑事責任を軽くすることはできない。

そうすると、本件各犯行を最終的に強く提案したのは起訴には至っていない共犯者であること、本件各犯行の目的は、被害品である本件鯨肉の摂食や転売ではなく、前記のとおり調査活動の一環としての証拠資料の収集に存し、当初は所要の調査を終えれば被害品を返還する意向であったこと、窃盗被害額自体は多額とはいえないこと、被告人Aは前科前歴ともなく、被告人Bも交通違反以外の前科前歴はないことなどの酌むべき事情を十分考慮し、かつ、人権規約19条の趣旨等を含め、所論が縷々主張する点や当審における事実取調べの結果を踏まえても、前記の犯情にかんがみ、被告人兩名についていずれも罰金刑をもって処断するだけの情状があるとは認められず、原判決の前記各量刑は刑期（原審における求刑は各懲役1年6月）及び執行猶予期間の点を含めていずれもやむを得ないものであって、これらが重過ぎて不当であるとはいえない。

論旨はいずれも理由がない。

## 7 結語

よって、刑訴法396条により本件各控訴をいずれも棄却することとして、主文のとおり判決する。

平成23年7月12日

仙台高等裁判所第1刑事部

裁判長裁判官 飯渕進 裁判官 植村幹男 裁判官 吉田智宏





## APPENDIX D. TOKYO DISTRICT COURT HEISEI 22 YEAR CRIMINAL (わ) No. 826

《全文》

【文献番号】25471497

威力業務妨害、傷害、器物損壊、艦船侵入、銃砲刀剣類所持等取締法違反被告事件

東京地方裁判所平成二二年刑(わ)第八二六号

平成22年7月7日刑事第一九部判決

主文

被告人を懲役二年に処する。

この裁判確定の日から五年間その刑の執行を猶予する。

押収してあるナイフ一丁(平成二二年押第一四五号符号四)を没収する。

理由

(犯行に至る経緯(1))

財団法人日本鯨類研究所は、甲野株式会社から用船した日本国籍船舶で編成される鯨類捕獲調査船団を南極海に派遣し、鯨類の捕獲調査を累次行ってきたが、平成一七年から同一八年にかけて行われた第一九次調査において、「シー・シェパード」と称する団体による妨害を受け、その後の調査においても同団体による妨害行為が行われてきた。被告人は、シー・シェパードに所属し、平成二一年一二月ころから、アディ・ギル号なる船舶を使用して、上記調査に対する妨害を行うようになった。

同研究所は、平成二一年一月から同二二年四月にかけて実施した第二三次調査において、甲野株式会社から用船した日本国籍船舶五隻で編成された鯨類捕獲調査船団(以下「調査船団」という。)を南極海に派遣したが、このうちの第二昭南丸は、鯨類の目視調査のほか、シー・シェパード側の船舶であるスティーブ・アーウィン号及びアディ・ギル号等による妨害行為を事前に阻止し、あるいは排除することを任務としていた。

平成二二年一月六日、アディ・ギル号は、第二昭南丸と衝突し、大破して航行不能となり、以後、被告人は、スティーブ・アーウィン号等に乗船するなどして調査船団に対する妨害を行っていた。

被告人は、同年二月一日午後一〇時五五分ころ、スティーブ・アーウィン号から降ろされたエンジン付きゴムボートに乗って第二昭南丸に接近し、他のシー・シェパードの関係者らと共に、同船に向けてガラス瓶様のものを投げ入れようとしたが、これらは同船に設置された侵入防止ネットに阻まれた。そこで、被告人らは、第二昭南丸と併走する上記ゴムボート上から、圧縮空気式発射装置を用いて、酪酸の入ったガラス瓶を第二昭南丸に撃ち込むこととした。

(罪となるべき事実(第一))

第一 被告人は、シー・シェパードと称する団体の構成員であるが、財団法人日本鯨類研究所が農林水産大臣の許可を受けて実施中の南極海鯨類捕獲調査を妨害することを企て、上記団体の関係者である氏名不詳者らと共謀の上、平成二二年二月一日午後一時(日本時間)ころ、南緯六〇度九分、東経六〇度九分付近の南極海(公海)上において、航行中の日本国籍船舶である第二昭南丸左舷側船橋甲板上及び左舷側上甲板上等で、同船船員らが、前記財団法人の要請を受けて実施していた南極海鯨類捕獲調査業務及びこれに付随する同船の操船業務及びシー・シェパードの構成員らによる同調査への妨害行為の排除業務に従事しているのを現認しながら、前記ゴムボート上から、第二昭南丸左舷側船橋部をめぐって酪酸の入ったガラス瓶を圧縮空気式発射装置から発射し、同所に衝突させ、同ガラス瓶を破裂させてガラス片及び同ガラス瓶内の酪酸を左舷側船橋甲板及び左舷側上甲板等に飛散させ、左舷側上甲板上で前記業務に従事していた同船船員A(当時二四歳)に対しその顔面等に酪酸を付着させる暴行を加えるとともに、左舷側船橋甲板及び左舷側上甲板等に異臭を拡散させるなどし、同船船員らの前記業務の遂行を著しく困難にさせ、もって威力を用いて人の業務を妨害するとともに、前記暴行により、Aに全治まで約一週間を要する顔面化学熱傷の傷害を負わせた。



(犯行に至る経緯(2))

被告人は、アディ・ギル号と第二昭南丸との前記衝突後、同船船長に対し衝突の責任を追及するとの名目の下に、同船に侵入することとし、平成二二年二月一五日午前七時三〇分ころ(日本時間)、シー・シェパードの関係者が操縦し、テレビ番組のカメラマンが同乗するジェットスキーに乗り、南極海(公海)上を航行中の第二昭南丸左舷側に密かに接近した。

(罪となるべき事実(第二及び第三))

被告人は、

第二 シー・シェパードの関係者である氏名不詳者らと共謀の上、正当な理由がないのに、平成二二年二月一五日午前七時三〇分(日本時間)ころ、南緯五七度、東経六五度付近の南極海(公海)上において、同海域を航行中の船長Bが看守する第二昭南丸の左舷側上甲板外縁部に両足を乗せて同所に設置された甲野株式会社(代表取締役C)所有の侵入防止ネット(時価約一三万円相当)を持っていたナイフ(平成二二年押第一四五号符号四)で切断して同船左舷側上甲板上に立入り、もって他人の器物を損壊するとともに、人の看守する艦船に侵入し、

第三 業務その他正当な理由による場合でないのに、前記第二の日時に、第二昭南丸左舷側上甲板上において、前記ナイフ(刃体の長さ約一九センチメートル)一丁を携帯した。

(証拠の標目)《略》

(事実認定の補足説明)

弁護人は、被告人が圧縮空気式発射装置(以下「ランチャー」という。)を使用して酪酸入りのガラス瓶(以下「本件酪酸瓶」ともいう。)を発射し、これが第二昭南丸左舷側船橋部操舵区画の壁面に当たって割れ、瓶内の酪酸が流出したことは争わないものの、判示第一の傷害の点について、〔1〕Aの傷害が上記発射行為によって生じたと認めるには合理的な疑いがあり、傷害と被告人の行為との間に因果関係はない、〔2〕上記発射行為は人に向けられた有形力の行使、すなわち暴行に該当しない、〔3〕被告人は、本件酪酸瓶を発射するに当たり、本件酪酸瓶が乗組員を直撃し、あるいは、割れた瓶の破片が当たることのないよう人のいない場所をねらっており、Aが負傷したとする左舷側上甲板上の地点に乗組員がいるとの認識はなく、また、本件酪酸の酸性度は低く、その有害性についての認識もなかったから、暴行あるいは傷害の故意もない、として被告人の無罪を主張し、Aの傷害の程度についても、全治約一週間と認定する根拠はないとして争い、被告人も、弁護人の主張に沿う弁解をする。

そこで、以下、事実認定について、補足して説明することとする。

一 本件発射行為と第二昭南丸の状況等について

関係各証拠によれば、被告人が、本件酪酸瓶を第二昭南丸に向けて発射した当時の状況等として、以下の事実が認められる。

(1) 被告人は、平成二二年二月一日午後一時ころ(日本時間である。以下、月日のみを記す場合は、平成二二年中のことである。)、スティーブ・アーウィン号から降ろされたエンジン付きゴムボートで、第二昭南丸に接近し、他のシー・シェパードの関係者らと共に、同船にガラス瓶様のものを投げ入れようとしたが、同船に設置された侵入防止ネットに阻まれた。すると、被告人は、上記ゴムボートで、第二昭南丸の左方から接近して併走しつつ、同船から約一五メートル離れた地点から、ランチャーを用いて、酪酸の入ったガラス瓶を同船左舷側船橋部を目標けて発射した(以下「本件発射行為」という。)。本件酪酸瓶は、被告人がねらった地点よりも船首側に約二メートル寄りの左舷側船橋部操舵区画の壁面に衝突して破裂した(以下、衝突地点を「着弾地点」ともいう。)。そして、割れた瓶の破片及び同瓶内の酪酸の一部が、左舷側船橋出入口用ドアの窓と同ドア横の船尾側窓にかかり、同ドア近くの左舷側船橋甲板通路上に飛散した。なお、被告人の供述によれば、本件酪酸瓶は、容量が三二〇ないし三五〇ミリリットル程度で、内部に酪酸が充填されており、瓶の総重量は約四五〇グラム程度のものであったことがうかがわれる。

(2) 本件発射行為当時、第二昭南丸は、進行方向とほぼ同一の方向への約二・一ノットの追い風の中、一四・一ノットで航行しており、甲板上では、進行方向と同一の方向から約一二ノット



ト、即ち、毎秒約六・二メートルの向かい風を受けていた。

(3) その当時、第二昭南丸左舷側甲板上には、B、D、E、A、F、G、H、Iの計八名の乗組員が配置され、さらに、マスト下部見張り台にはJが配置されていた。

このうち、左舷側船橋甲板上には、着弾地点から船首方向に約二メートルの地点にDが、船尾方向に約一一・六メートルの地点にE及びIが配置されていた。着弾地点から約八・一五メートル下方の左舷側上甲板上通路部分には、着弾地点から水平距離で船尾方向に約四・八メートル（直線距離で約八・八メートル）の地点にA、同様に水平距離約一四・六メートル（直線距離で約一六・三メートル）の地点にF、水平距離約一五・六メートル（直線距離で約一七・二メートル）の地点にG、水平距離約一五・六メートル（直線距離で約一七・一メートル）の地点にHがそれぞれ配置されていた。船橋上部甲板操舵区画の左舷側には船長のBがおり、その位置から着弾地点までの距離は約二・六五メートルであった。

付言すると、被告人は、第二昭南丸に前記ゴムボートで接近した当時、Aがいた前記位置の辺りには乗組員の姿を見なかった旨を供述している。しかし、Aは本件発射行為時の自分がいた位置を明確に証言している上、Gも、自分やHがいた地点から船首方向に約一〇メートル離れた地点にAがおり、本件発射行為後、船首方向へ走った際に、上記地点にうずくまっているAの姿を見た旨を証言し、Hも検察官調書抄本（甲二〇）中で上記各証言と符合する趣旨の供述をしている。その各供述の信用性を疑うべき事情はなく、当時、Aが上甲板上の前記位置にいたことは明らかである。

(4) 左舷側上甲板上にいたA、G及びFは、本件酪酸瓶が破裂した直後、それぞれ、頬や目の痛み、発赤、充血等の症状を呈し、目を開けていることも困難な状態となり、左舷側船橋甲板上にいたEも頬に刺激を感じた。そこで、A、G及びFは、持ち場を離れて船内のシャワールームに入り、顔面や眼を水で洗浄するなどしたが、Aには最も顕著に症状が現れて、目は充血し、上まぶた及び両頬が赤く張れ、左頬の発赤の中心部分には白い水ほうを生じた。

(5) 本件発射行為後、第二昭南丸船長のBは、Aら負傷者の治療のため、妨害排除業務等を継続することは困難と判断し、妨害船スティープ・アーウィン号等の追尾を一時中断して、調査船団から離脱した。

## 二 Aの負傷の原因について

(1) 負傷の状況について、Aは、公判廷で、「被告人がボート上でランチャーを構えた際、その筒先がブリッジの方向を向いていたので、右斜め上のブリッジを見上げていたところ、暗い赤色っぽい物体が飛んでいった。その後、ボート上から『ヒヤッホウ』というような喜ぶ声を聞いた。上記物体が飛んでいくのを見てから一、二秒後、目がぼやけ、開けづらくなり、痛みだした。特に右目は燃えるような激しい痛みだった。その直後に両頬にもひりひりするような痛みを感じた。目や頬に痛みを感じてから一、二秒後、ブルーチーズのにおいを強烈にしたような、肥だめにも似たにおいがした。その後、痛みでうずくまっていたが、コンパニオン（船橋構造物）の陰に移動し、さらにHに付き添ってもらってシャワールームへ行き、目と顔を水で洗った。鏡で自分の顔を見たところ、目は充血し、両頬は赤くなり、左頬には水ぶくれができていた。左頬はじゅくじゅくして水ぶくれになっていた。室内は酪酸のにおいが充満していた。」旨を証言している。

Gも、公判廷で、「左舷側上甲板上で、私の横にF、Hがおり、私より船首側に約一〇メートル離れた位置にAがいた。被告人がゴムボート上で何かを発射し、音とともにランチャーの銃口から赤い煙が出てゴムボートから歓声が上がるのが聞こえた。その一、二秒後、目や顔に痛みを感じて、目を開けられなくなり、それと同時に酪酸の異臭が漂ってきた。Fも痛みを訴えており、船首方向では、Aがうずくまり、うなるような声をあげていた。私、F、Aの三人が、シャワールームで顔と目を洗浄したが、酪酸のにおいが充満していた。私も、目は充血し、両頬は赤くなっていたが、Aの顔は、わっという感じで、まぶたが腫れ、目が充血して、両頬が真っ赤になり、頬の真ん中あたりが白く水ぶくれのようになっていて、本当に痛そうな、つらそうな顔をしていた。」旨を証言している。



いずれも、本件酪酸瓶が前記ボート上から発射された状況や、その後の痛み、異臭について、迫真性をもって具体的に証言しており、その間に食い違いもない。また、上記各証言は、当時、左舷側船橋甲板上にいたEの供述内容（甲二一）とも符合している。

（2）Aらの前記各証言を裏付ける以下の事情も存在する。

ア 第二昭南丸乗組員が撮影した動画（甲一〇）には、被告人がランチャーを発射した直後、乗組員らの「大丈夫か。」「酪酸。」などという声が聞こえて船内が騒然となった状況や、その数分後に船内のシャワールームで、A、G、Fの三名が目や頬を洗浄している姿が記録されている。そして、同日午後一時一七分ころにAの顔面を撮影した写真（甲二三）には、Aの両眼、特に右眼が充血し、上まぶた及び両頬が赤く腫れ、左頬に水ぼうが生じているなどの症状が認められる。

イ 関係証拠によれば、酪酸は、中程度の強さの酸で、腐敗したバター様の不快なおいがあり、短期暴露の影響として、眼、皮膚、気道に対し腐食性を有しており、皮膚への接触は、痛み、発赤、水ぼう、皮膚熱傷などを、目への接触は、痛み、発赤、重度の熱傷、視力喪失などを惹起する危険な物質であることが認められるところ、Aらの前記症状は、酪酸を皮膚や目に浴びた場合に生ずる典型的な症状と同様のものである。

（3）以上によれば、A、Gの各証言の信用性に疑問の余地はなく、上記各証言等により認められる当時の具体的な被害状況のほか、前記一認定の乗組員の配置状況、甲板上的風向き、風速等を総合すれば、Aの傷害は、被告人がランチャーで発射した本件酪酸瓶が破裂し、その内容物の酪酸が空中に飛散し、その飛沫が左舷側上甲板上に降下し、Aの顔面等に付着して生じたものと認められる。

### 三 Aの負傷の原因に関する弁護人の主張について

これに対し、弁護人は、前記のとおり、Aの負傷が酪酸によると認定することには合理的な疑いを入れる余地がある旨主張する。

その理由として挙げるのは、〔1〕酪酸はある程度粘性を有しており、本件酪酸瓶が破裂したとしても、当時の毎秒約六・二メートルの和風状況下では、酪酸が飛沫となって広範囲に飛散したとは考え難い、〔2〕A自身、ガラス片との接触やこれを踏んだ感触、液体を浴びたとか、細かい雨や霧状のものが降ってきたなどの感触はなかった旨証言しているところ、当時Aはフェイスカバー付きヘルメットを着用し、鼻の辺りまでフェイスカバーを下ろしていたというのであるから、飛散した液体がヘルメットの内部にまで入り込むはずがない、〔3〕Aは、被告人がランチャーで発射した後、身構えずに漫然と五秒以上ブリッジを見上げていた旨を証言しているが、その証言する当時の同人の行動は、危険に対峙している者のそれとして極めて不自然であり、上記証言内容は信用できない、〔4〕Aが酪酸を浴びたとすれば、噴霧状の酪酸の飛沫を吸い込み、それに伴う症状を呈したはずであるのに、Aからそのような訴えはなかった、〔5〕酪酸が付着したというAらが当時着用していた合羽や前記ヘルメットは、本件酪酸瓶の撃ち込みによる負傷を立証する重要な証拠であるのに、その後、合羽が廃棄され、ヘルメットが洗剤で洗浄されるなどして、証拠保全の措置がとられていないのは不自然である、〔6〕当時、第二昭南丸には酪酸対策として中和剤が準備されており、その使用により、Aの化学熱傷が引き起こされた可能性も否定できない、などというものである。被告人も、Aの傷害は、第二昭南丸の乗組員らがインパルス銃で発射した液体に含まれていた有害な化学物質により生じたと考えられる旨を供述している。

そこで、弁護人の上記主張及び被告人の供述にかんがみ、以下、検討する。

まず、関係証拠によれば、酪酸は油状の透明液体であり、水によく溶ける性質を有することが認められる。本件酪酸がどの程度希釈され、どの程度の粘性があったかは、証拠上必ずしも明らかではない（弁護人は、第二昭南丸が日本に帰港後に実施された実況見分（甲四）において、指示説明者が、酪酸の付着状況について「窓に液体が垂れていた」と表現していることなどを粘性があったことの根拠として指摘している。しかし、上記実況見分において、別の指示説明者は、「窓に液体が付いて流れていた」と説明し、また、Dは、「窓が液体が降りかかったようにぬれ



ていた」旨を供述している（甲一六）。被告人自身、捜査段階では、本件酪酸は水のような状態のものである旨を供述している（乙一二）。したがって、弁護人が指摘する上記の点を根拠に、本件酪酸が粘性のある液体であったとは直ちには認め難い。）。関係証拠によれば、本件酪酸瓶が着弾地点で破裂後、酪酸の相当量が左舷側船橋部操舵区画の壁面、窓ガラス、左舷側船橋甲板通路部分に飛散、流出したことがうかがわれるが、着弾地点の位置、左舷側船橋甲板左舷側通路の幅等のほか、本件酪酸瓶が粉碎しており、壁面との衝突時の衝撃が相当に強かったことがうかがわれる状況等からすれば、本件酪酸瓶が破裂した際に酪酸の一部が飛沫化し、左舷側船橋甲板通路部分を左舷側へ超えて左舷上甲板上へ飛散、降下し、当時、甲板上を船首から船尾に向けて吹く約六・二メートルの風に流されながら、Aらに降りかかり、前記の被害を引き起こしたものと推認できる。確かに、A、Gは、その顔面に液体等が付着するなどの接触感等はなかった旨を証言しているが、顔面に付着した酪酸が、飛沫化した微量のものであれば、接触感等がなかったとしても格別不自然、不合理なことではない。また、このような被害状況自体から逆に推測して、本件酪酸は、少なくとも、前記態様で破裂したような場合には、飛沫化して空中に飛散しやすい性状の液体であったということができるのである。

弁護人は、ランチャーからの発射物の飛んだ行方を追ってその方向を見上げていたというAの証言部分が信用できないというが、Aの上記行動は、当時の状況に照らしてごく自然であり、その信用性は十分である。なお、弁護人指摘のとおり、本件当時、AやGらは、フェイスガード付きのヘルメットを装着していたことが認められる。しかし、Aらの証言によれば、フェイスガードを下ろすと途中で一度止まることや目が隠れていれば安全と考えていたことから、フェイスガードを鼻の辺りまでしか下ろしていなかったことが認められる。そして、Aの証人尋問の際に公判廷で実施した検証の結果によると、Aが装着していたヘルメットは、同人の鼻の下辺りまでフェイスガードを下ろした場合には、フェイスガードとAの頬との間には約五センチメートルの隙間が空くことが認められる。Aが、当時、着弾地点から約八・八メートル、水平距離で船尾側に約四・八メートルの位置にいて、左舷側上甲板上の乗組員の中では最も着弾地点に近い場所に立っていたこと、しかも、前記のとおり、当時ランチャーから発射された本件酪酸瓶の行方を追って顔を右上方に向け、その分、ヘルメットのフェイスガードの下端と顔面の間隙部も上向き加減になっていたという状況などを前提にして考えると、Aについては、左舷側上甲板上の船尾側にいた乗組員（G、H、F）に比べて、飛散、降下してきた酪酸の飛沫が顔面に付着しやすい条件下にあったということができるといえる。目の痛み等を訴えた乗組員らの中で、Aの症状が最も重かったことは、正に上記の状況と符合するものである。また、Aらは、目や頬に痛みを感じるのと同時に酪酸特有のにおいをかいでおり、同人らが酪酸の成分を吸入したことは否定できないとしても、弁護人が主張するような吸入に伴う症状が生ずるかどうかは、その吸入した酪酸の量等にもよるのであるから、Aらから咽頭痛等の訴えがなかったからといって、そのことが、前記態様で酪酸が飛散してAらの顔面に付着したことを否定する根拠にはならない。

なお、関係証拠によれば、左舷側上甲板上にいたGらはインパルス銃と称する携帯式消火器具を携行しており、被告人がゴムボートで第二昭南丸に接近してきた際、G及びFが、被告人らに向け、威嚇のため左舷側上甲板上からインパルス銃で水様の液体を発射したが、その発射距離は六、七メートルでゴムボートには到達しなかったことが認められる。被告人は、GやFが用いていたインパルス銃のタンク内に何らかの化学物質を含む液体が充填されており、インパルス銃発射時に、その液体のしぶきがかかったためにGやAの目や頬に異変が生じたのではないかとの推測を述べる。しかし、その推測の根拠は、つまるところ、インパルス銃で真水を発射するだけでは被告人らの妨害行為を排除する効果がないから、その液体の中に有害な化学物質を含んでいたに違いないという憶測でしかないものである。G及びFは、インパルス銃のタンクに装填して発射した液体は、船内の真水であったと明確に供述しており、第二昭南丸の帰国後、G及びFのインパルス銃のタンク内の液体を鑑定した結果でも、その中に催涙成分等は含まれていなかったことが認められる（甲二八）。また、仮に、被告人の上記推測を前提にした場合、G、F及びAの位置関係及び当時の風向からすれば、インパルス銃の発射時、その近くにおいて発射された液体の



しぶきを受けた可能性の最もあるG、Fらが比較的軽傷で済み、風上に約一〇メートル離れた位置にいて上記しぶきが及びようもないAが一層重い症状を呈したというのは、明らかに不合理といわざるを得ない。したがって、Aの傷害がインパルス銃の発射により生じたとは認められない。

また、弁護人は、中和剤による傷害の可能性も指摘しているが、関係証拠に照らしおよそ根拠がないものである。さらに、弁護人は、酪酸がかかったという合羽が廃棄され、ヘルメットが洗浄されるなどして証拠を保全していないのは不自然であるとも主張するが、本件の被害は、日本からはるか離れた南極海（公海）を航行中の民間の船舶に対し、外国人の組織的な集団により船外の海上から攻撃を受けたことによるものであり、直ちにその犯人を検挙できる現実的な可能性が乏しかったことなどからすれば、証拠の収集、保全よりも、著しい悪臭を放つ上記物品をすみやかに廃棄ないし洗浄することを優先させたということは、むしろ实际的、合理的な対応であったともいえるのである（被告人が後に第二昭南丸に侵入し、その身柄が確保されたことからすれば、上記証拠品を酪酸が付着した状態で保管しておけば本件の立証に役立ったということはいえるとしても、それは結果論にすぎない。）。

以上のとおり、弁護人の〔1〕ないし〔6〕の主張及び被告人のインパルス銃に関する弁解は、Aの傷害が被告人が撃ち込んだ本件酪酸により生じた旨の前記二（3）の認定を左右するものではなく、いずれも採用できない。

#### 四 本件発射行為の暴行該当性について

弁護人は、本件発射行為は人の身体に向けられたものではないとし、それ自体暴行に該当しない旨を主張をする。

しかし、被告人は、第二昭南丸左舷側船橋部の目標地点を目がけて、ランチャーを使用して本件酪酸瓶を発射しており、被告人自身、上記行為により、同船の乗組員の近くで本件酪酸瓶を破裂させて酪酸の悪臭等を乗組員に及ぼし、その業務を妨害することを企図したことを認めている。また、前記のとおり、Aの被害状況等からは、少なくとも、本件酪酸は、本件のような態様で破裂、飛散した場合には飛沫化して空中に拡散するような性状の液体であり、そして、その飛沫が皮膚等に付着した場合には人の生理的機能に障害を生じさせる有害性を有していたことが明らかである。また、被告人の供述等によれば、本件で被告人が使用したランチャーは、シー・シェパード構成員による手製のもので、照準器はなく、じゃがいも程度の重量のものをランチャーの筒に空気漏れが生じないように装填した場合には、その射程距離は七〇メートル程度であることが認められる。加えて、関係証拠によれば、被告人は、本件発射行為時、海上を約一五ノットの速度で上下に揺れながら疾走するエンジン付きゴムボート上から、腰付近にランチャーを構えて本件ガラス瓶を発射したことが認められる。

このようなランチャーの性能、構造、本件発射行為時の状況のほか、第二昭南丸の甲板上の相対的な風向、風速（当時、甲板上の乗組員は、船首から船尾に向かって毎秒約六・二メートルの向かい風を受ける状況にあった。）等からすると、本件発射行為は、当時、左舷側船橋部付近に複数いた乗組員に本件酪酸瓶を直撃させる危険が相当にあった上、これを船体に激突・破裂させることにより、粉碎されたガラス片や瓶内の酪酸を飛散させて、これらを左舷側船橋部付近にいた上記乗組員のほか、左舷側上甲板上に配置されていたAを含む乗組員の身体に浴びせ、人体に有害な影響を及ぼす危険性もあつたと認められる。現に、前記のとおり、本件酪酸瓶は、Dからわずか約二メートル離れた左舷側船橋部操舵区画の壁面に激突していることからしても、本件発射行為に伴う上記の危険性は相当に高かつたといえることができる。このような行為は、正に、人に向けられた不法な有形力に行使にほかならないものであつて、客観的に暴行に該当することが明らかである。

よって、弁護人の主張は採用できない。

#### 五 被告人の暴行及び傷害の故意について

前記一（3）の認定のとおり、被告人が第二昭南丸に向けてランチャーで本件酪酸瓶を発射した当時、同船左舷側甲板上には、船橋甲板上にD及びEが、その下の左舷側上甲板通路上にA、



F、G及びHらが配置されるなど、複数の乗組員が妨害排除業務等に従事していた。蛍光色の救命胴衣の着用者（D、A、Hら）もいて、被告人が乗っていた前記ゴムボートからも第二昭南丸の左舷側に配置されていた乗組員の存在をはっきりと確認できる状況にあったことがうかがわれる。被告人自身、本件発射行為当時、第二昭南丸の左舷側の乗組員のうち、上甲板上のG、F及びHが配置されていた地点付近に三名、船橋甲板上のE及びIの配置されていた地点付近に少なくとも一名、船橋上部甲板上に少なくとも一名、船橋甲板上の操舵区画の脇の梁（円柱様の構造物）の陰に一名の乗組員（D）を見た旨自ら認めている。このような認識の下、被告人は、命中精度が高いとは言い難いランチャーを用い、前記認定の状況下で、Dから約四メートル離れた左舷側船橋部の目標地点を目がけ、本件酪酸瓶を発射したというのであるから、当時、本件発射行為に伴う前記四認定の危険性を十分に認識していたものと認められる。

被告人は、本件当時、酪酸はそもそも人体に無害であると思っていた上、本件で用いた酪酸は十分に希釈されたものであるから、乗組員に傷害の結果が生じることを全く想定していなかった旨弁解している。しかし、被告人は、酪酸を第二昭南丸の船内に飛散させ、その臭気等により乗組員の業務を妨害することを企図して本件発射行為に及んだことは前記のとおりであり、酪酸が酸性の液体であり、非常に強い臭気を放つ物質であることは認識していたものと認められる。したがって、被告人が酪酸の化学的性質の詳細を理解していなかったとしても、少なくとも、上記のような物質が人の目に入るなどした場合において、その生理的機能に障害を生じさせるといった程度の認識は十分にあったと認めることができる。

そうすると、被告人は、本件発射行為時、自らが行おうとしている行為が、第二昭南丸左舷側船橋部付近や上甲板上にいた複数の乗組員に向けた不法な有形力の行使であるとの認識、即ち暴行の故意を有していたばかりでなく、これら乗組員のうちの誰かは分からないが、ガラス瓶そのもの、あるいは、飛散したガラス片及び酪酸の物理的、化学的作用により、その者の人体の生理的機能に障害を生じさせる蓋然性を認識し、かつ、そのような障害が生じてもかまわないとの認容、すなわち傷害の未必的故意をも有していたと認められる。

被告人は、前記のとおり、本件発射行為時、左舷側上甲板上のAが負傷した地点に乗組員の存在を認めなかった旨供述しているが、その真偽はさておき、前記故意の内容の下では、被告人がAの存在に気付いていなかったとしても、Aに対する暴行及び傷害の未必的故意を肯定することができるのであり、本件傷害罪の成立を優に認めることができる。

よって、弁護人の主張は採用できない。

## 六 傷害の程度について

弁護人は、医師の診断が写真と無線による問診のみによってされた点や、診断書が問診から一〇日以上経過してから作成された点を指摘して、Aに生じた顔面化学熱傷の傷害について、全治までに要する期間を約一週間と認めることには疑問があると主張する。

関係証拠によれば、二月一日、Aの左頬に水ぼうがが生じ、その後かさぶたとなったこと、二月一三日、K医師が、無線による問診と受傷部位を二月一日及び翌一二日に撮影した各写真の観察により、Aの傷害につき、全治約一週間を要する二度の化学熱傷と診断したことが認められ、この点は特に争いはない。

K医師は、当公判廷及び検察官調書（甲二四）において、熱傷の全治期間とは、かさぶたが自然にはがれるまでの期間をいうのが一般的であり、水ぼうがが出来てかさぶたがはがれるまでの期間は、短くても一週間は要する旨を供述しているが、専門的知見に基づく上記供述の信用性を疑うべき事情は見当たらない。また、診断方法についても、被害直後及びその翌日の鮮明な写真による視診と無線による問診を併用してされているが、K医師が従前からこの方法により船員らの医療相談を受けていたことなどに照らせば、その診断方法に何ら不適切などころはない上、その診断書も各乗組員ごとに作成している診療録に基づいて作成したというのであるから、作成過程についても信用性を損なう事情はない。したがって、K医師作成の診断書及び同人の供述は十分に信用できるものであって、Aが、少なくとも全治までに約一週間を要する化学熱傷を負ったことを優に認めることができる。



よって、弁護人の主張は採用できない。

(法令の適用)

被告人の判示第一の所為のうち、威力業務妨害の点は刑法六〇条、二三四条、二三三条に、傷害の点は同法六〇条、二〇四条に、判示第二の所為のうち、器物損壊の点は同法六〇条、二六一条に、艦船侵入の点は同法六〇条、一三〇条前段に、判示第三の所為は銃砲刀剣類所持等取締法三一条の一八第三号、二二条にそれぞれ該当するところ、判示第一の威力業務妨害と傷害、判示第二の器物損壊、と艦船侵入とは、いずれも一個の行為が二個の罪名に触れる場合であるから、刑法五四条一項前段、一〇条によりそれぞれ一罪として判示第一につき重い傷害罪、判示第二につき犯情の重い艦船侵入罪の刑(ただし、罰金刑の多額は器物損壊罪のそれによる。)で処断し、判示第一ないし第三につきいずれも懲役刑を選択し、以上は同法四五条前段の併合罪であるから、同法四七条本文、一〇条により最も重い判示第一の罪の刑に同法四七条ただし書の制限内で法定の加重をした刑期の範囲内で被告人を懲役二年に処し、情状により同法二五条一項を適用してこの裁判確定の日から五年間その刑の執行を猶予し、押収してあるナイフ一丁(平成二二年押第一四五号符号四)は、判示第三の犯罪行為を組成した物で被告人以外の者に属しないから、同法一九条一項一号、二項本文を適用してこれを没収し、訴訟費用は、刑訴法一八一条一項ただし書を適用してこれを被告人に負担させないこととする。

(弁護人の主張に対する判断)

弁護人は、判示第三のナイフの不法携帯の事実につき自首が成立する旨を主張する。

一 関係各証拠によれば、以下の事実が認められる。

被告人は、第二昭南丸に侵入後、本件ナイフを船内に隠し、二月一五日午前八時五八分ころ、操舵室に赴き、同船の乗組員らに発見された。その後、同船船長のBは、船員法上の船長権限に基づき、同船内で被告人を監視下におき、同船を調査船団から離脱させて帰国することとしたが、被告人は、同船が日本に到着するまでの間に本件ナイフを隠し場所から回収し、自分が使用していた船室内に移した。第二昭南丸は、三月一二日、東京港に到着し、被告人は、同日午前一時一六分、同船室内で海上保安官により艦船侵入罪により通常逮捕された。そして、その逮捕に伴う捜索が開始されたところ、被告人が通訳を介して「所持品がある。」と述べ、左足首部分を指差し、着用していた作業着の裾をまくったことから、海上保安官が確認したところ、被告人の左足靴下の内側に本件ナイフが発見され、差し押さえられた。

二 ところで、被告人の供述によれば、本件艦船侵入の際、本件ナイフのほか、それよりも短い刃体のナイフの計二本を携帯し、侵入時に短い方のナイフを海中に投棄したことが認められるが、身柄が船長の監視下に置かれた後、乗組員の船員には、侵入時に携帯していたナイフは一本であって、侵入防止ネット切断後に、そのナイフを海中に投棄した旨を説明していたことがうかがわれ、本件ナイフの存在自体には言及していなかったと認められる。そうしてみると、前記捜索時における被告人の申告により、捜査機関が、「本件ナイフ」の不法携帯の事実を初めて知ったことは、法廷で取り調べた証拠による限りは否定し難いというべきである。しかし、他方、前記捜索の状況からは、被告人による申告を待つまでもなく、身体の上記捜索により本件ナイフが発見されるのは必至であったといえる。自首は、自発的に自己の犯罪事実を申告することであるが、被告人の上記申告の経緯等からすれば、被告人は、逮捕に伴う身体の上記捜索により本件ナイフが発見され、侵入時から継続する本件ナイフの不法携帯の事実が発覚することはもはや時間の問題であると考え、やむなく、その所在を明らかにしたものと認められる。

三 以上によれば、被告人は、自ら進んで艦船侵入時の本件ナイフの不法携帯という自己の犯罪事実を申告したものとはいえず、その申告行為は、刑法四二条一項の自首には当たらないというべきである。

よって、弁護人の主張は採用できない。

(量刑の事情)

本件は、シー・シェパードの構成員である被告人が、同団体の関係者らと共謀の上、〔1〕財団法人日本鯨類研究所が南極海で行っている調査捕鯨を妨害するため、調査捕鯨船団を構成する





第二昭南丸に対し、同船左舷側甲板上に乗組員がいることを認識しながら、ランチャーを用いて酪酸入りのガラス瓶を発射し、これを船体に衝突・破裂させ、その酪酸を飛散させて、その悪臭等により威力をもって同船の乗組員らの業務遂行を妨害するとともに、乗組員一名に酪酸を付着させて顔面化学熱傷の傷害を負わせ（判示第一）、その後、〔2〕第二昭南丸の侵入防止ネットをナイフで切断し、器物を損壊して同船内に侵入した（判示第二）ほか、〔3〕その侵入時、単独で、同船内において上記ナイフを不法に携帯した（判示第三）、という事案である。

このうち、判示第一の犯行について、犯行に用いられた酪酸は、人に熱傷等を生じさせる危険な化学物質であり、被告人は、この酪酸を詰めたガラス瓶を、相当な発射力を有する圧縮空気式発射装置であるランチャーを用いて、海上で上下して揺れながら疾走するゴムボート上から、第二昭南丸の複数の乗組員が左舷側甲板上等で作業しているのを現認しながら、約一五メートルという近い距離から左舷側船橋部に向けて発射したものである。このような行為は、甲板上で業務に就いていた乗組員らに、本件酪酸瓶を直撃させるおそれがあるほか、船体に衝突させた場合でも破裂したガラス瓶の破片や酪酸を飛散させて乗組員らに浴びせ、人体に重大な傷害を発生させるおそれもあり、それ自体、危険極まりない行為であった。そして、本件では、その行為の危険性が現実のものとなり、乗組員一名が全治約一週間の化学熱傷を負うに至った。上記乗組員は、被害直後に洗眼等の適切な措置をとり、その後の治療により幸いにして後遺障害は生じなかったが、酪酸が目に入ったことで、一時は激しい痛みが続き、「失明するかもしれない」との恐怖を感じたほどであった。犯行現場は南極海であり、適切な医療措置を迅速に受けられる状況にはなく、この点からも、本件発射行為の危険性、悪質性を指摘することができる。また、酪酸が左舷側船橋部付近や上甲板上に飛散したことにより、前記被害者のほか、他の乗組員も目の痛み等を訴え、船内が混乱状態に陥り、負傷者の治療等に追われ、本来の業務の遂行が著しく妨げられ、現に第二昭南丸は、シー・シェパード側の妨害船の追跡を断念し、一時調査船団からの離脱を余儀なくされるという事態も生じた。

以上のとおり、本件発射行為は、第二昭南丸の乗組員に傷害を負わせるとともに、第二昭南丸の乗組員らの業務遂行を著しく妨げたものであって、そのもたらした結果、影響は重大というべきである。ところが、未だに、被告人からこの犯行に係る被害弁償はされていない。傷害を負った被害者や業務遂行を著しく妨害された第二昭南丸の関係者らが一様に厳しい処罰を求めているのも当然のことといえる。

次に、判示第二、第三の各犯行も、闇に紛れ、ジェットスキーで密かに第二昭南丸に近付き、ナイフを使用して侵入防止ネットを切断して器物を損壊し、艦船内に侵入し、その際にナイフを不法に携帯したものであって、犯行態様は悪質というべきである。なお、被告人は、その犯行動機について、第二昭南丸とアディ・ギル号との前記衝突の責任を問うため、第二昭南丸の船長への面会を求めるものであったとして正当性を主張している。しかし、被告人が前記衝突の法的責任が第二昭南丸側にあると考えていたとしても、損害賠償の請求等は法的な手続によるべきものである。その侵入目的が被告人が述べるようなものであったにせよ、それは、いかなる意味においても、器物損壊を伴う悪質な態様の本件侵入行為を正当化するものではないというべきである。

ところで、被告人が本件当時所属していたシー・シェパードは、財団法人日本鯨類研究所が南極海で行っている調査捕鯨は違法であるとの主義主張に基づき、その調査船団の捕鯨調査を妨害するため、捕鯨調査船のスクリューに絡ませるため海中にロープを投げたり、捕鯨調査船に向けて酪酸等の入ったガラス瓶を投てきしたりするなど、危険で悪質な妨害行為を組織的に繰り返してきているものである。主義主張を実現するために上記のような暴力的手段を用いることが決して許されるものでないことはいうまでもなく、現に、シー・シェパードの暴力的な妨害行為に対し、国際捕鯨委員会（IWC）では、これを容認しない旨の決議、声明も出されている。それにもかかわらず、その後も、シー・シェパードはその決議等を無視して暴力的な妨害行為を続けてきていることがうかがわれ、本件各犯行も、かかる妨害行為の一環として敢行されたものといえる。



被告人は、このようなシー・シェパードの主義主張のみならず、暴力的な妨害活動にも同調し、その供述によれば、平成二一年七月以降、自らもこのような妨害活動に積極的に参加しようと考え、アディ・ギル号の船長として、また、アディ・ギル号が大破した後も、ゴムボートに乗船して、本件調査船団への妨害に関与し、実行行為者として本件各犯行に及んだものである。被告人の一連の行動は、主義主張のためには乗組員に危害を加えてもかまわないという独善的、確信犯的な発想に基づくものであり、本件犯行加担の経緯、動機に酌むべき点はない。

以上によれば、被告人の刑事責任は重く、今後、同種事犯の再発を防ぐとの観点から、被告人を厳罰に処することも考えられる。

しかしながら、他方で、被告人には、次のような事情も認められる。

被告人は、本件発射行為と傷害との因果関係や傷害の故意は争ったものの、外形的事実自体は認め、その余の犯罪の成立をすべて認めている。また、今後は、南極海での反捕鯨活動には参加しない旨も法廷で明言している。公判段階に至り、器物損壊の被害者に対し一三万六五〇〇円を被害弁償として支払ったことも認められる。加えて、被告人には、日本での前科はない。

これらの事情からすると、被告人が、今後、南極海等で本件と同種事犯に及ぶおそれは相当程度減少したものと評価することができる。

そこで、以上の諸事情を総合考慮し、被告人に対し、主文掲記の刑に処した上、その執行を猶予するのが相当であると判断した。

よって、主文のとおり判決する。

(求刑懲役二年、ナイフ一丁没収)

(裁判長裁判官 多和田隆史 裁判官 田村太郎 小松京子)

#### (Footnotes)

1 日本仙台高等裁判所平成22年（う）第217號。

