

4.4

Marine Mammal Conservation Governance in the Arctic

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In the Arctic, marine mammals have been hunted for centuries, if not millennia. In Alaska, Arctic Canada, Greenland, Iceland, Norway and Russia, marine mammals have contributed to the subsistence of the people residing in the frosty realms of the North. for management purposes.

Marine mammal hunts, i.e. the hunts for cetaceans, seals, polar bears, or sea otters, have been regulated on a regional and local level. The first such regulatory agreement was the Jan Mayen Seal Fishery Treaty, which was concluded between Germany, Britain, the Netherlands, Norway and Russia in 1875. This treaty was an alignment of hunting activities between the signatories at Jan Mayen in the North Atlantic). In order to avoid overexploitation of the seal herds, hunting was to take place at specific times and at specific locales. As such, it presents the first conservation agreements for seals in the world.

In the Bering Sea, the US, Great Britain (for its colony Canada), Japan and Russia were actively hunting fur seals at the Pribilof Islands. Intense sealing operations caused drastic declines in seal herds, which led to the conclusion of an Arbitration Treaty in 1893 that established a 60 mile no-take zone for the US and Britain, Japan and Russia engaged in pelagic sealing, again drastically reducing seal herds. Consequently, in 1911 the Bering Sea Fur Seal Regime was concluded, which banned pelagic sealing and prohibited the trade in seal products stemming from pelagic hunts. This regime lasted until 1984, when it collapsed.

In 1983, the European Communities (now European Union, EU) put in place a ban on the import of products stemming from seal pups stemming from commercial hunts. 26 years later, this 'Seal Pups Directive' was expanded to encompass all trade in seal products from these hunts. Even though both regimes contain(ed) exemptions for indigenous subsistence hunts, it triggered cases both before European Court of Justice (ECJ) by Inuit and non-Inuit commercial sealers, and before the World Trade Organization (WTO).

Indigenous subsistence sealing nowadays takes place in Alaska, Canada (Nunavut), Greenland and Russia (Chukotka). Commercially, seals are hunted in Atlantic Canada and Norway while seals are hunted for fisheries management purposes in Iceland, Sweden and Finland. All of these hunts are subject to national legislation since no international body exists that regulates sealing.

The North Atlantic Marine Mammal Commission (NAMMCO), established in 1992 by Norway, Iceland, the Faroe Islands and Greenland, provides government advice on all aspects related to the conservation and sustainable use of marine mammals. . This is fundamentally different to the International Whaling Commission (IWC), which directly regulates commercial whaling activities worldwide. The 88-member IWC has become a controversial international organisation due to its adversarial internal positions since the imposition of a 'moratorium' on commercial whaling in 1982. Due to the moratorium, Canada left the IWC in 1982, establishing its own regulatory regime for whaling. Also, Iceland, an active commercial whaling nation, left the Commission shortly after the establishment of NAMMCO, but rejoined in 2002, yet with a reservation towards the moratorium. Norway and the Soviet Union (now Russian Federation) formally objected to the moratorium and are therefore not bound to it. Japan, one of the most outspoken advocates of commercial whaling, left the IWC in 2019 after years of controversy.

Although the 'moratorium' is in place, whaling as such is not illegal. Aboriginal Subsistence Whaling (ASW) takes place in Alaska, Greenland, Chukotka and Bequia (St Vincent and the Grenadines). Also scientific whaling is possible, but apart from the UK (very briefly in the 1960s), Iceland (shortly after the adoption of the moratorium) and Japan (for several decades in the North Pacific and the Antarctic), this provision has not been made use of.

In the Arctic, whaling is still an actively pursued activity. Inuit whaling takes place in Alaska, Nunavut and Greenland whereas the Chukchi in easternmost Russia hunt whales for subsistence purposes, subject to national legislation. Commercial whaling takes place in Iceland and Norway. Annual quotas are set by the respective fisheries ministries.

In the Faroe Islands, active drive hunts for small cetaceans, primarily pilot whales, are ongoing, regulated by Faroese legislation. Contrary to baleen and one toothed whale (sperm whale), all of which fall under the ambit of the IWC, no such global body exists for small cetaceans. In the Arctic, NAMMCO is the only multilateral body overseeing marine mammal conservation. In addition, cross-border regulation of beluga whaling occurs in Eastern Canada and Greenland as well as between northeastern Alaska and the Northwest Territories in Canada.

The decline of polar bears in its range states prompted the US, the Soviet Union, Norway, Canada and Denmark (Greenland) to adopt the Agreement for the Conservation of Polar Bears (ACPB) in 1973. The ACPB bans the commercial hunt for this species and the trade in their products. Subsistence hunts and trade in products from these hunts are permitted. In addition, regional soft-law agreements in the Southern Beaufort Sea, Kane Basin, Baffin Bay, Alaska and Chukotka have emerged to adapt the ACPB's provisions to local conditions.

The complex and patchy regulatory framework for marine mammals have raised calls for an international marine mammal commission, which appears rather unlikely. The only global regime relevant for marine mammals is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under CITES, all international trade in IWC-protected species is prohibited (Appendix I-listing) while trade regulations for all other cetaceans and polar bears are in place (Appendix II-listing). In recent years, attempts have been made to restrict all international trade in polar bears. These attempts have failed so far.

For more on this, read...

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